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State Register

Judicial Notice Shall Be Taken of Material Published in the State Register

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, official notices to the public, state and non-state public contracts, grants, supreme court and tax court decisions, and a monthly calendar of cases to be heard by the state supreme court.

Printing Schedule and Submission Deadlines

Vol. 13 Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
18	Monday 17 October	Monday 24 October	Monday 31 October
19	Monday 24 October	Monday 31 October	Monday 7 November
20	Monday 31 October	Monday 7 November	Monday 14 November
21	Monday 7 November	Monday 14 November	Monday 21 November

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the State Register editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

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For Legislative News

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

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Contact: Senate Public Information Office
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(612) 296-0504

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This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

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Minnesota Rules: Amendments and Additions

NOTICE: How to Follow State Agency Rulemaking in the State Register

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 75 state agencies have the authority to issue rules. Each agency is assigned specific *Minnesota Rule* chapter numbers. Every odd-numbered year the *Minnesota Rules* are published. This is a ten-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Proposed and adopted emergency rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

If an agency seeks outside opinion before issuing new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION in the *Official Notices* section of the *State Register*. When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety in the *State Register*; only the changes made since their publication as **Proposed Rules**. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the *Minnesota Guidebook to State Agency Services*.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues 1-13 inclusive; issues 14-25 inclusive; issue 26, cumulative for issues 1-26; issues 27-38 inclusive; issue 39, cumulative for 1-39; issues 40-51 inclusive; and issue 52, cumulative for 1-52. An annual subject matter index for rules appears in August. For copies of the *State Register*, a subscription, the annual index, the *Minnesota Rules* or the *Minnesota Guidebook to State Agency Services*, contact the Minnesota Documents Division, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000 or toll-free in Minnesota 1-800-652-9747 and ask for "Documents."

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Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Health

Proposed Permanent Rules Relating to Drug and Alcohol Testing Laboratories; Licensing; and

Proposed Permanent Rules Relating to General Accreditation Requirements for Laboratories

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Health (hereinafter "Department") intends to adopt rules relating to general accreditation requirements for laboratories, proposed parts 4740.0100 to 4740.0170 and licensure for laboratories for drug and alcohol testing in the workplace, proposed parts 4740.1010 to 4740.1080. The Department intends to adopt the rules without a public hearing following the procedures set forth in the Administrative Procedure Act at *Minnesota Statutes* §§ 14.22 to 14.28 (1986). The statutory authority to adopt the rules is *Minnesota Statutes* §§ 144.07 (1986) and 181.953 (Supp. 1987).

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Proposed Rules

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Department will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be submitted to:

Mr. John Ikeda
Laboratory Services Section
Division of Public Health Laboratories
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone: (612) 623-5681

The proposed rules may be modified if the modifications are supported by data and views submitted to the Department and do not result in a substantial change in the proposed rules as noticed.

A copy of the proposed rules is attached to this notice.

Statements of Need and Reasonableness that describe the need for and reasonableness of each provision of the proposed rules and identify the data and information relied upon to support the proposed rules have been prepared and are available from John Ikeda upon request at the above address.

Pursuant to *Minnesota Statutes* § 14.115, subd. 2, the impact on small businesses has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small businesses may do so. The Department's position regarding the impact of the rules on small businesses is set forth in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the adopted rules must submit a written request to John Ikeda at the above address.

Dated: 17 October 1988

Sister Mary Madonna Ashton
Commissioner

Rules as Proposed (all new material)

DRUG AND ALCOHOL TESTING OF EMPLOYEES

4740.1010 DEFINITIONS.

Subpart 1. **Scope, application.** The following terms used in parts 4740.1020 to 4740.1080 have the meanings given them in this part.

Subp. 2. **Alcohol.** "Alcohol" means ethyl alcohol.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Health.

Subp. 4. **Confirmatory test.** "Confirmatory test" means a drug or alcohol test, run on a sample that was positive on the initial screening test. Techniques for a confirmatory test are described in part 4740.1070, subparts 5 and 6.

Subp. 5. **Department.** "Department" means the Department of Health.

Subp. 6. **Drug.** "Drug" means a controlled substance as defined in *Minnesota Statutes*, section 152.02, and as updated yearly by rules of the Board of Pharmacy.

Subp. 7. **Employee.** "Employee" means a person, independent contractor, or person working for an independent contractor who performs services for compensation, in whatever form, for an employer.

Subp. 8. **Employer.** "Employer" means a person or entity located or doing business in this state and having one or more employees, and includes the state of Minnesota and all political or other governmental subdivisions of the state.

Subp. 9. **Initial screening test.** "Initial screening test" means a drug or alcohol test that can detect the presumptive presence of a drug, drug metabolite, or alcohol in a sample. Techniques for an initial screening test are described in part 4740.1070, subparts 5 and 6.

Subp. 10. **Job applicant.** "Job applicant" means a person, independent contractor, or person working for an independent contractor who applies to become an employee of an employer, and includes a person who has received a job offer that is contingent on the person passing drug or alcohol testing.

Subp. 11. **Laboratory.** "Laboratory" means a person, corporation, or other entity, including a governmental entity, that examines, analyzes, or tests samples.

Subp. 12. **NCCLS.** "NCCLS" means the National Committee for Clinical Laboratory Standards, Villanova, Pennsylvania.

Subp. 13. **NIDA.** "NIDA" means the National Institute for Drug Abuse, of the Alcohol, Drug Abuse, and Mental Health Administration, United States Health and Human Services Department.

Subp. 14. **Positive test result.** "Positive test result" means a finding of the presence of drugs, alcohol, or their metabolites in the sample tested by a confirmatory test in levels at or above the threshold detection levels set by the commissioner under part 4740.1080.

Subp. 15. **Presumptive presence.** "Presumptive presence" means some indication of the presence of a drug, drug metabolite, or alcohol that, in the judgment of the laboratory director or the laboratory director's designee, provides a reasonable basis for conducting a confirmatory test. The presumptive presence of a drug, drug metabolite, or alcohol is not a positive test result.

Subp. 16. **Sample.** "Sample" means a substance derived from a nonhuman source and collected for the purpose of analysis or a tissue, blood, excretion, or other bodily fluid specimen obtained from a human for the detection of a chemical, etiologic agent, or histologic abnormality.

Subp. 17. **Threshold detection level.** "Threshold detection level" means that level at which a drug, drug metabolite, or alcohol could reasonably be expected to be detected in a sample by a confirmatory test.

4740.1020 LICENSE REQUIRED FOR LABORATORIES PERFORMING DRUG AND ALCOHOL TESTING FOR EMPLOYERS.

A laboratory that performs drug and alcohol laboratory tests of employees and job applicants for Minnesota employers must possess a valid license to do so. A laboratory must obtain a license according to the procedures in parts 4740.0100 to 4740.0170, as proposed at .. *State Register* and as subsequently adopted. In addition to the information required on an application for a license, a laboratory that performs only initial drug and alcohol screening tests must disclose on its application the name of the licensed laboratory that performs its confirmatory tests.

4740.1025 EXCEPTION.

A medical clinic, hospital, or other medical facility need not be licensed under parts 4740.1010 to 4740.1080 to perform a breath test as an initial screening test for alcohol if:

A. the medical clinic, hospital, or other medical facility is not owned or operated by the employer; and

B. the results of the breath test are confirmed by a blood test performed by a laboratory licensed under parts 4740.1010 to 4740.1080.

4740.1040 RECIPROCITY.

A license shall be granted to a laboratory located in another state, if the requirements of *Minnesota Statutes*, section 181.953, subdivision 1, paragraph (c), are met.

4740.1050 TERM OF LICENSE.

Laboratories shall be licensed for a term of one year beginning on July 1 and ending June 30. Unless a laboratory submits a timely application for license renewal, the license expires without further notice at the end of the term.

4740.1060 FEES.

Subpart 1. **Annual license fee required.** The laboratory must pay an annual license fee with the initial application for license and with each renewal application. The amount of the fee is determined under subpart 3. It is based upon the number of samples taken from Minnesota employees, that the laboratory tests.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Proposed Rules

Subp. 2. **Information required to determine fee.** The laboratory must submit an estimate of the number of annual Minnesota employee samples to be tested for drugs and alcohol with the application for a license or license renewal. The laboratory must submit to the department quarterly reports of the volume of actual employee drug and alcohol testing samples and the results of proficiency testing results for the past quarter. The statistics from these reports are used to adjust the license fee collected from the laboratory on its next license renewal application to reflect actual sample volume.

Subp. 3. **License fee schedule.** Annual license fees are determined according to the following schedule:

$$\text{License fee} = (a) \quad \$1,200 + (b) \left[\frac{\text{Total annual alcohol samples taken from Minnesota employees} + \text{Total annual drug samples taken from Minnesota employees}}{2} \right] \times \$3/\text{sample}$$

A sample obtained for both alcohol and drug testing is considered as one alcohol sample and one drug sample for fee purposes. The \$1,200 in part (a) of the schedule is nonrefundable.

Laboratories located outside Minnesota are assessed actual cost of additional labor, travel, and lodging expenses the department incurs in the laboratory inspection.

4740.1065 ANNUAL INSPECTION.

The commissioner shall conduct periodic inspections of laboratories licensed for drug and alcohol testing of employees. Inspections shall be unannounced and occur at least annually.

4740.1070 PERFORMANCE METHODS REQUIRED FOR ISSUANCE OF A LICENSE.

Subpart 1. **Standards required.** To qualify for a license to conduct drug and alcohol testing for Minnesota employees and job applicants, the officers or the owner of a laboratory must use the performance methods described in subparts 2 to 8.

Subp. 2. **Test samples.** The usual sample for drug testing is freshly voided urine. A breath, urine, or blood sample may be used for initial screening tests. When the breath test is used as the initial screening test for alcohol, a blood sample shall be obtained for the confirmatory test. The blood sample shall be collected immediately after the breath test. When an initial positive urine test indicates the presence of drugs, a blood test may be used for the confirmatory test.

The sample volume must be adequate to allow for the initial screening test, a confirmatory test, and a confirmatory retest.

Subp. 3. **Collection of urine samples; procedures.** The laboratory must have written procedures for collecting urine samples. The collection procedures must contain paragraphs 6 and 11 to 16 of the specimen collection procedures in Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies, NIDA, as provided by the *Federal Register*, volume 52, pages 30639 and 30640, Friday, August 14, 1987. Paragraphs 1 to 5 and 7 to 10 of these procedures are optional. The site where the sample is collected must have a stall or partitioned area that allows the individual being tested to provide the individual's urine specimen in privacy. The collection site person must sign and date either the tape sealing the sample container or the sample container label.

Subp. 4. **Collection of blood samples; procedures.** The laboratory must have written procedures for collection of blood samples. The procedure must address identification of the employee or job applicant, necessary collection supplies, seating or positioning of the employee or job applicant during sample collection, cleansing of the skin at the venipuncture site, and verification that the sample and paperwork are from the individual from which the sample was collected. NCCLS Guidelines H3-A2, Procedures for Collection of Diagnostic Blood Specimens by Venipuncture, 2nd Edition, Approved Standard, 1984, is an acceptable guide for the collection of blood samples. This document is not subject to frequent change, is incorporated by reference, and is available at the State Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155.

The collection site person must sign either the tape sealing the sample container or the sample container label.

Subp. 5. **Techniques for drug testing.** For an initial screening test for drugs or drug metabolites, the laboratory must use a chromatographic technique or an immunoassay method. Samples that show the presumptive presence of a drug or drug metabolite must be confirmed by the gas chromatography/mass spectrometry (GC/MS) technique.

Subp. 6. **Techniques for alcohol testing.** A breath test, alcohol dehydrogenase reaction, microdiffusion, or oxidation of distillate with potassium dichromate may be used as a method to initially test for the presence of alcohol. The presumptive presence of alcohol must be confirmed using gas chromatography.

Subp. 7. **Confirmatory tests required.** A laboratory that performs only initial testing must obtain confirmatory results from a licensed laboratory that performs confirmatory tests.

Subp. 8. **Chain-of-custody procedures for handling samples.** The laboratory must follow written chain-of-custody procedures that, at a minimum, meet the requirements of items A to C.

A. Possession of a sample must be traceable to the employee from whom the sample is collected, from the time the sample is collected through the time the sample is tested, the test result reported, the sample retested, and the sample stored.

B. At all times, the sample must be in the possession of, in view of, or placed in a secured area by a person authorized to handle the sample.

C. A sample must be accompanied by a written chain-of-custody record. Individuals relinquishing or accepting possession of the sample must record the time the possession of the sample was transferred and must sign and date the chain-of-custody record at the time of transfer.

Subp. 9. **Storage of positive samples.** All confirmed positive samples shall be stored frozen for at least six months. The sample container must be sealed and labeled. The freezer must be locked or be located in a secure area.

Subp. 10. **Requirements for directors.** The director of the laboratory must be a full-time employee of the laboratory, must possess a doctoral or a master's degree in a biological or medical science, and must have at least three years' experience in an analytical toxicology laboratory.

Subp. 11. **Proficiency testing required.** Satisfactory participation in a proficiency testing program is required of a laboratory applying for or renewing a license. The Forensic Urine Drug Testing surveys conducted by the College of American Pathologists and the American Association for Clinical Chemistry and the NIDA Performance Test Program are acceptable proficiency testing programs. The laboratory must participate at the appropriate screening and confirmatory test levels for which an application for license is submitted.

Subp. 12. **Procedures for proficiency testing.** Before applying for or renewing a license, a laboratory must participate in and report the results of three cycles of proficiency testing. The laboratory must mail proficiency testing results to the commissioner.

The procedures for handling and testing proficiency test samples after receipt by the laboratory must be identical to the procedures for normal laboratory samples.

Laboratory personnel shall not be informed that these samples are part of a performance test to the extent possible.

A licensed laboratory may also be subjected to blind proficiency testing. Performance on blind testing samples is required at the same level as for the open proficiency testing.

A false-positive result from a confirmatory test sample is unsatisfactory performance. Two false-positive results from a screening test sample during a one-year period constitute unsatisfactory performance. The laboratory must inform the commissioner, in writing, of any false-positive test result on a proficiency testing sample, with a plan of corrective action. The commissioner will be informed within 14 days of receipt of the proficiency testing report.

Subp. 13. **Laboratory procedure manual.** The laboratory must possess and follow a laboratory procedure manual. The laboratory manual must describe the individual test procedures performed by the laboratory. The manual must have a table of contents and numbered pages. The manual must be reviewed annually. The description of the test procedures must include sections addressing the sample used for the test, reagents, supplies and materials, equipment calibration, quality control, the step-by-step procedure, calculations, reporting results, special notes, safety precautions, limitations of the procedure, references, and flow diagrams. Changes in a procedure must be reviewed and dated. Clinical Laboratory Procedure Manuals; Approved Guidelines, GP2-A, National Committee for Clinical Laboratory Standards, 1984, is an acceptable guide to writing a laboratory manual. This document is not subject to frequent change, is incorporated by reference, and is available at the State Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155.

4740.1080 THRESHOLD DETECTION LEVELS.

Threshold detection levels for confirmatory tests of drugs and drug metabolites defined in *Minnesota Statutes*, section 152.02, and rules of the Board of Pharmacy are 1,000 ng/ml, except as listed in items A to K:

A. marijuana metabolite (delta-9 tetrahydrocannabinol-9-carboxylic acid), 15 ng/ml;

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- B. cocaine, 150 ng/ml;
- C. benzoylecgonine, 150 ng/ml;
- D. opiates, 300 ng/ml;
- E. phencyclidine, 25 ng/ml;
- F. amphetamines, 500 ng/ml;
- G. fentanyl, 5 ng/ml;
- H. lysergic acid diethylamide (LSD), 5 ng/ml;
- I. 3-4-methylenedioxy amphetamine (MDA), 300 ng/ml;
- J. alcohol (urine), .02 gram percent; and
- K. alcohol (blood), .02 gram percent.

4740.1090 VARIANCE AND WAIVERS.

A laboratory may request that the department grant a variance or waiver from the provisions of parts 4740.1000 to 4740.1080. A request for a variance or waiver must be submitted to the department in writing. A request must contain the following information:

- A. the specific rules for which the variance or waiver is requested;
- B. the reasons for the request;
- C. the alternative measures that will be taken if a variance or waiver is granted; and
- D. the length of time for which the variance or waiver is sought.

The commissioner shall review information submitted with the request for waiver or variance. The commissioner shall provide the laboratory with a written decision that states the reasons for granting or denying the request for the variance.

Rules as Proposed (all new material)

CHAPTER 4740 DEPARTMENT OF HEALTH LABORATORIES; ACCREDITATION REQUIREMENTS

4740.0100 PURPOSE AND SCOPE.

The rules in chapter 4740 contain accreditation procedures and standards for laboratories that perform tests or analyses as required by state or federal law.

4740.0110 DEFINITIONS.

- Subpart 1. **Scope.** The terms used in parts 4740.0100 to 4740.0170 have the meanings given them in this part.
- Subp. 2. **Accreditation.** "Accreditation" means licensure or certification of a laboratory to perform specific tests.
- Subp. 3. **Certification.** "Certification" means written acknowledgment of the laboratory's demonstrated capability to perform tests for a specific purpose.
- Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Health.
- Subp. 5. **Laboratory.** "Laboratory" means a person, corporation, or other entity, including a governmental entity, which examines, analyzes, or tests samples.
- Subp. 6. **Licensure.** "Licensure" means authorization to perform laboratory tests for a purpose defined by statute.
- Subp. 7. **Out-of-control quality control result.** "Out-of-control quality control result" means a result from an internal quality control sample that does not fall within a statistically acceptable range.
- Subp. 8. **Sample.** "Sample" means a substance derived from a nonhuman source and collected for the purpose of analysis or a tissue, blood, excretion, or other bodily fluid specimen obtained from a human for the detection of a chemical, etiologic agent, or histologic abnormality.

4740.0120 APPLICATION PROCEDURES.

Subpart 1. **Standards.** To obtain accreditation, the laboratory must comply with subparts 2 to 5 and with the technical standards that apply to the specific laboratory test for which accreditation is sought, as specified in rule.

Subp. 2. **Contents.** The application shall include:

- A. the address of the principal place of business or headquarters;
- B. the address and phone number of the laboratory that seeks accreditation, if different than in item A;
- C. the names of officers and the laboratory director;
- D. written assurance that the laboratory meets the standards of parts 4740.0100 to 4740.0170 and the standards that apply to the specific test for which laboratory accreditation is sought, as specified in rule;
- E. the signatures of two officers or managing agents of the laboratory and proof of the signatories' authority to bind the laboratory; and
- F. other reasonable information necessary to determine compliance with accreditation requirements.

Subp. 3. **Documentation.** At the time of application, the laboratory shall submit or have available for inspection the following documents:

- A. a current laboratory manual;
- B. criteria for accepting and rejecting samples for testing;
- C. proficiency testing results;
- D. internal quality assurance records;
- E. corrective action for out-of-control quality control results;
- F. sample receipt and storage records;
- G. equipment calibration and standardization records;
- H. equipment repair and preventive maintenance records;
- I. personnel education and training requirements;
- J. laboratory safety policies; and
- K. written chain-of-custody procedures.

Subp. 4. **Fee.** The laboratory shall submit with its application a nonrefundable fee, in the amount established by the specific rule for the purpose or type of test for which accreditation is sought.

Subp. 5. **Inspection.** The laboratory must demonstrate compliance with accreditation requirements through an inspection conducted by persons designated by the commissioner. Inspections shall be unannounced and at a frequency established by the rule specific to the purpose or type of test for which accreditation is sought.

4740.0130 PROVISIONAL ACCREDITATION.

A laboratory that meets accreditation application requirements shall receive provisional accreditation until an on-site inspection is completed. Upon demonstration, through inspections, of compliance with standards specific to the purpose or type of testing for which accreditation is sought, full accreditation shall be granted.

4740.0140 TERM OF ACCREDITATION.

Laboratories shall be accredited for a term of one year, which shall include any period of provisional accreditation. Unless a laboratory submits a timely application for renewal of the accreditation, the accreditation expires without notice at the end of the term.

4740.0150 COMPLIANCE.

All accredited laboratories shall immediately inform the commissioner of any changes to the information required by part 4740.0120 and the rules specific to the laboratory test for which accreditation is sought. The laboratory director must inform the commissioner in writing of any changes in test methodology, instrumentation, key personnel, or laboratory ownership and submit revisions to the documents listed in part 4740.0120, subpart 3, within 14 calendar days of the change.

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Proposed Rules

4740.0160 ACCREDITATION RENEWAL.

A laboratory shall submit an application for renewal of accreditation with the applicable renewal fee, no later than 30 days before the expiration date of the current accreditation. The renewal application shall contain the same information required for an initial application in part 4740.0120, subpart 2. At the time of application for a renewal of its accreditation, the laboratory shall also submit or have available for inspection the documents listed in part 4740.0120, subpart 3. Unless a laboratory submits a timely application for accreditation renewal, the accreditation expires without further notice at the end of the term.

4740.0170 ACCREDITATION; SUSPENSION AND REVOCATION.

The commissioner may, pursuant to *Minnesota Statutes*, chapter 14, suspend, revoke, refuse to renew, condition, or limit the accreditation of a laboratory upon finding that the laboratory has repeatedly violated provisions of parts 4740.0100 to 4740.0160 or has repeatedly failed to meet standards defined under the rule applicable to the specific laboratory test for which the laboratory is accredited.

Pollution Control Agency

Proposed Permanent Rules Relating to Air Quality and Air Quality Permitting

Notice of Intent to Adopt Rule Amendments Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rule amendments without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rule amendments without a public hearing in *Minnesota Statutes* section 14.22 to 14.28 (1986). The Agency's authority to adopt the rule amendments is set forth in *Minnesota Statutes* section 116.07, subd. 4 (1986).

All persons have until 4:30 p.m. on November 30, 1988, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rule amendments. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the Agency will proceed pursuant to *Minnesota Statutes* section 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be submitted to:

Ms. Elizabeth Henderson
Staff Engineer
Minnesota Pollution Control
Division of Air Quality
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7554

The proposed rule amendments may be modified if the modifications are supported by data and views submitted to the Agency and do not result in a substantial change in the proposed rule amendments as noticed.

The proposed rule amendments, if adopted, will bring air quality rule terminology into agreement with proposed amendments to *Minnesota Rules* ch. 7005.0100 in conjunction with proposed amendments to the Offset Rules, *Minnesota Rules* Parts 7005.3010 to 7005.3060, which are being promulgated in a separate rulemaking proceeding. The rule amendments will also change *Minnesota Rules* Part 7005.0520, Table 2 to reference "dry" standard cubic feet per minute in reference to exhaust gases from industrial equipment; and will delete *Minnesota Rules* Part 7001.1210, Subpart 2, Item E. which exempts facilities using less than 10,000 gallons of solvent borne coating per year from air emission facility permitting requirements. The proposed rule amendments are published below. One free copy of the rule amendments is available upon request from Ms. Henderson at the address and telephone number stated above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon to support the proposed rule amendments has been prepared and is available from Ms. Henderson upon request.

You are hereby advised, pursuant to *Minnesota Statutes* section 14.115 (1986), "Small business considerations in rulemaking," that the proposed rule amendments will not affect small businesses as defined in *Minnesota Statutes* section 14.115 (1986) because the basic requirements of the rules remain unchanged.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rule amendments as adopted, must submit a written request to Ms. Henderson.

Gerald L. Willet, Commissioner

Rules as Proposed

7001.0020 SCOPE.

Except as otherwise specifically provided, parts 7001.0010 to 7001.0210 apply to the following:

A. to H. [Unchanged.]

I. An agency permit required for the construction, modification, reconstruction, or operation of an air emission facility or stationary source except those activities permitted under parts 7005.0700 to 7005.0820. Parts 7001.0100, subparts 4 and 5 and 7001.0110 do not apply to permits for construction, modification, or reconstruction of a ~~facility~~ stationary source with a potential controlled net increase of a single criteria pollutant of less than 100 tons per year or to permits for operation of a facility or stationary source with an actual emission rate of a single criteria pollutant of less than 500 tons per year. Part 7001.0100, subpart 5, item C₁ does not apply to permits for construction, modification, or reconstruction of a ~~facility~~ stationary source with a potential controlled net increase of a single criteria pollutant of 100 tons per year to 250 tons per year or to permits for operation of a facility or stationary source with an actual emission rate of a single criteria pollutant of 500 tons per year to 5,000 tons per year. Part 7001.0040, subpart 1₁ applies to permits for air emission facilities or stationary sources, except that for a permit not subject to a Minnesota or federal public notice requirement, the time period referenced in that subpart shall be 90 days.

J. and K. [Unchanged.]

7001.1200 SCOPE.

Parts 7001.1200 to 7001.1220 apply to the issuance of permits for emissions units, air emission ~~facility permits~~ facilities or stationary sources, and supplement the agency permit rules in parts 7001.0010 to 7001.0210.

7001.1210 PERMIT REQUIREMENT.

Subpart 1. **Permit required.** Except as provided in subpart 2, no person may construct, modify, reconstruct, or operate an emissions unit, emission facility, stationary source, or control equipment without obtaining an air emission ~~facility~~ permit from the agency.

Subp. 2. **Exemptions.** A person who constructs, modifies, reconstructs, or operates an emissions unit, emission facility, or stationary source that meets one or more of the following exclusions need not obtain an air emission ~~facility~~ permit from the agency:

A. a ~~total emission facility~~ stationary source with potential emissions of a single criteria pollutant of less than 25 tons per year, except:

- (1) ~~a~~ an emissions unit, emission facility, or stationary source subject to parts 7005.0900 to 7005.0960, Control of Odors in the Ambient Air;
- (2) a stationary source or emission facility subject to ~~federal~~ new source performance standards; and
- (3) a ~~total emission facility~~ stationary source with potential lead emissions of at least 1,000 pounds per year;

B. to D. [Unchanged.]

E. ~~a facility that uses less than 10,000 gallons of solvent borne coating per year;~~

~~F-~~ a storage tank for petroleum liquid with a capacity of less than 40,000 gallons;

~~G-~~ F. a dry bulk agricultural commodity facility with an annual commodity throughput of less than 45,000 tons;

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Proposed Rules

~~H. G.~~ an incinerator with a maximum refuse burning capacity of less than 1,000 pounds per hour, unless thermally treating hazardous waste; and

~~I. H.~~ a concrete batching facility that produces less than 200,000 cubic yards of concrete per year.

7001.1215 PERMIT APPLICATION.

In addition to the information required by part 7001.0050, a person who requests an air emission facility permit shall submit the following information to the commissioner:

A. to D. [Unchanged.]

7001.1220 SPECIAL CONDITIONS FOR AIR EMISSION FACILITY PERMITS.

In addition to the special conditions in part 7001.0150, subpart 2, and if applicable to the circumstances, an air emission ~~facility~~ permit may contain special conditions including but not limited to the following:

A. standards of performance for air pollutants from an emissions unit, emission facility, or stationary source;

B. to D. [Unchanged.]

7002.0020 DEFINITIONS.

Subpart 1. to 3. [Unchanged]

Subp. 4. **Commissioner.** "Commissioner" means the ~~chief executive officer~~ commissioner of the Minnesota Pollution Control Agency.

Subp. 5. [Unchanged.]

Subp. 6. **Major emission facility.** "Major emission facility" means a ~~facility~~ stationary source having potential emissions of 100 tons per year or more of sulfur dioxide or particulate matter.

Subp. 7. [Unchanged.]

Subp. 8. [See Repealer.]

7002.0100 AIR QUALITY PERMIT FEE SCHEDULE.

Subpart 1. **Scope.** The fees established in this part are applicable to facilities and indirect sources which require an air emission ~~facility~~ permit under part 7001.1210 (permit rules, air emission ~~facility~~ permits) or an indirect source permit under part 7001.1270 (permit rules, indirect source permits). For the purpose of this part, the terms used have the meanings given them in part 7005.0100 (air pollution control rules, definitions).

Subp. 2. **Application fee.** A person making application for an air emission ~~facility~~ permit or an indirect source permit shall submit with the application an application fee of \$80.

Subp. 3. and 4. [Unchanged.]

Subp. 5. **Annual fees.** All persons required to obtain an air emission ~~facility~~ permit shall pay the following applicable annual fee:

A. \$1,040 for a major emission facility; or

B. \$240 for an ~~emission facility~~ a stationary source other than a major emission facility.

The agency shall not charge an annual fee for an ~~emission facility~~ a stationary source with potential emissions of a single pollutant of more than 25 tons per year but less than 50 tons per year unless the ~~facility~~ stationary source also discharges lead to the ambient air.

Subp. 6. [Unchanged.]

7005.0100 DEFINITIONS.

Subpart 1. to 24. [Unchanged.]

Subp. 24a. **Modification.** "Modification" means a physical change or a change in the operation of an emissions unit, emission facility, or stationary source that is not allowed under a permit, stipulation agreement, or an applicable air pollution control rule, and that results in an increase in the emission of an air pollutant.

Subp. 25. to 29. [Unchanged.]

Subp. 30. **Owner or operator.** "Owner or operator" means a person who owns, leases, operates, controls, or supervises an emissions unit, emission facility, or stationary source.

Subp. 31. to 35a. [Unchanged.]

Subp. 35b. **Reconstruction.** "Reconstruction" means replacement of depreciable components of an existing ~~emission source~~ emissions unit to which a New Source Performance Standard or state air pollution control rule is applicable, to the extent that the fixed capital cost of the depreciable components exceeds 50 percent of the fixed capital cost of depreciable components that would be required to construct a comparable entirely new ~~emission source~~ emissions unit.

Subp. 35c. and 35d. [Unchanged.]

Subp. 37. **Shutdown.** "Shutdown" means the cessation of operation of an emissions unit, emission facility, stationary source, or control equipment for any purpose.

Subp. 39. to 42. [Unchanged.]

Subp. 42a. **Startup.** "Startup" means the setting into operation of an emissions unit, emission facility, stationary source, or control equipment for any purpose.

Subp. 42b. and 44. [Unchanged.]

7005.0116 OPACITY STANDARD ADJUSTMENT.

Subpart 1. **Application for permit modification.** An owner or operator of an emission facility may file an application for a permit modification under parts 7005.0200 to 7005.0280 for adjustment of the opacity standard applicable to an ~~emission source~~ emissions unit. In addition to the items required under parts 7005.0200 to 7005.0280, the application must contain data that demonstrates that:

A. based on tests conducted under parts 7005.1850 to 7005.1880, the ~~emission source~~ emissions unit is in compliance with the applicable standard of performance for particulate matter and all other standards of performance, except the opacity standard;

B. the ~~total emission facility~~ stationary source is in compliance with all applicable standards of performance except the opacity standard at the ~~emission sources~~ emissions unit for which adjustments are being sought or have already been permitted by the agency; and

C. the ~~total emission facility~~ stationary source was operated in a manner to minimize the opacity of emissions at the ~~emission source~~ emissions unit during the performance tests conducted under item A.

Subp. 2. **Atmospheric dispersion modeling.** If the data submitted under subpart 1 indicates that an adjustment of the opacity standard may cause or contribute to a violation of an ambient air quality standard, the agency shall require the owner or operator to conduct atmospheric dispersion modeling and include the results of the modeling in the application for a permit modification. However, a ~~total emission facility~~ stationary source that has potential emissions of particulate matter of less than 25 tons per year is not required to conduct modeling. Modeling must be performed according to "Guidelines on Air Quality Models (AQPM No. 1-2-080, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, 1978), EPA-450/2-78-027R, as amended by supplemental updates, or methods that the commissioner finds to be comparably reliable. The Guidelines are incorporated by reference. The Guidelines are written and published by the USEPA, Office of Air and Radiation, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711. The guidelines are subject to frequent change and are available from the Minnesota State Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155.

Subp. 3. **Opacity adjustment determination and permit modification.** The agency shall set an adjusted opacity standard at the most restrictive level which the performance tests conducted under subpart 1, items A and C demonstrate the ~~emission source~~ emissions unit is capable of meeting and shall modify the permit to establish the adjusted opacity standard, if the requirements of subparts 1 and 2 are met and the ~~total emission facility~~ stationary source, with the adjusted opacity standard, would meet any one of the following:

A. to C. [Unchanged.]

7005.0520 TABLE 2.

Source Gas Volume, DSCFM ^a	Concentration GR/DSCF ^b
7,000	0.100
or less	
8,000	0.096

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9,000	0.092
10,000	0.089
20,000	0.071
30,000	0.062
40,000	0.057
50,000	0.053
60,000	0.050
80,000	0.045
100,000	0.042
120,000	0.040
140,000	0.038
160,000	0.036
180,000	0.035
200,000	0.034
300,000	0.030
400,000	0.027
500,000	0.025
600,000	0.024
800,000	0.021
1,000,000	0.020
or more	

^aDry standard cubic feet per minute

^bGrains per dry standard cubic foot.

7005.1310 METHOD OF MEASUREMENT.

Subpart 1. [Unchanged.]

Subp. 2. **Method.** Fallout sampling devices shall be placed at one or more locations beyond the premises on which a ~~source or sources~~ an emissions unit or units are located, upwind and downwind of ~~such the~~ premises. The sampling devices shall be exposed to substances settling out of the ambient air for a period of one hour. The presence of red-colored spots on the gelatin indicates that acidic substances have settled out of the air while the presence of blue-colored spots on the gelatin indicates that alkaline substances have settled out of the air. The number of spots visible on samplers exposed upwind of premises to be subtracted from the number of spots visible on samplers exposed downwind of the same premises. The difference in the number of spots, if any, shall be construed to be attributable to emissions occurring on the premises under investigation.

Subp. 3. [Unchanged.]

7005.1600 SUBSTITUTE DEVICES FOR FABRIC FILTERS.

Subpart 1. [Unchanged.]

Subp. 2. **Other control equipment.** Compliance with any applicable provision of parts 7005.1550 to 7005.1610 which refers to a control equipment specification shall be demonstrated in accordance with this ~~section~~ part if the referenced control equipment is not used.

A. The owner or operator of the ~~emission source~~ emissions unit, or vendor of emission control equipment, shall make available to the commissioner sufficient information as may be required to demonstrate that the substitute equipment will provide the degree of emission control which, in the judgment of the commissioner, is at least as stringent as that which would be achieved by using the equipment specified in the applicable standard. To the maximum extent practicable, the determination of equivalent degree of emission control will be based upon operation at the actual conditions at which the substitute device is, or will be, operated on the ~~emission source~~ emissions unit. Factors which will be considered include, but are not limited to, total mass collection efficiency, collection efficiency versus particle size reliability, and maintenance practices associated with proper operation of the substitute device. The method used to determine the total mass collection efficiency and particle size distribution must be approved by the commissioner.

B. The owner or operator of the ~~emission source~~ emissions unit, or vendor of emission control equipment, shall submit to the commissioner performance data including, but not limited to, total mass collection efficiency and collection efficiency versus particle size of the substitute control device under actual operating conditions which are representative of those of the existing or planned operating conditions.

C. [Unchanged.]

Subp. 3. [Unchanged.]

7005.2860 STANDARDS OF PERFORMANCE FOR CERTAIN COAL HANDLING FACILITIES.

The owner or operator of a new or existing coal handling facility which is located within the Minneapolis-Saint Paul Air Quality Control Region or within the boundaries of the city of Duluth shall perform the following abatement measures unless otherwise exempt by portions of these parts:

A. to F. [Unchanged.]

G. Enclosed coal handling facilities or ~~emission sources~~ emissions units not specifically covered by any other provision in these parts. If exhaust gases from any enclosed coal handling facility exceed 20 percent opacity, then the owner or operator of such facility shall select and implement one of the following further controls:

(1) and (2) [Unchanged.]

H. and I. [Unchanged.]

7005.2950 AIR POLLUTION EPISODES.

Parts 7005.2950 to 7005.3006 apply to any owner or operator of any emission facility or stationary source having allowable emissions of any air pollutant of 250 or more tons per year located within or having air pollutant emissions affecting any area within ~~the state of~~ Minnesota for which an air pollution alert, air pollution warning, air pollution emergency, or air pollution significant harm episode has been declared by the commissioner.

7005.2960 DEFINITIONS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Allowable emission.** "Allowable emission" means the emission rate calculated using the maximum rated capacity of the emission facility or stationary source, unless the emission facility or stationary source is subject to enforceable permit conditions which limit the operating rate or hours of operation or both, and the applicable standard of performance ~~set forth~~ in agency rules or the standard ~~set forth~~ in the permit, whichever is more stringent.

Subp. 5. to 10. [Unchanged.]

7005.2990 CONTROL ACTIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Episode emission reduction plan.** The owner or operator of each emission facility or stationary source located within the state having allowable air pollutant emissions of at least 250 tons per year shall within 90 days of the effective date these parts submit to the commissioner an episode emission reduction plan to be implemented at the facility or stationary source in the event of a declaration by the commissioner of an air pollution episode. The plan shall be consistent with the emission reduction objectives ~~set forth~~ in subpart 4 and shall designate at least two individuals to be notified in the event of the declaration of an air pollution episode. The plan shall be subject to the approval of the commissioner. If the commissioner finds that the plan is inconsistent with such emission reduction objectives the plan shall be returned to the owner or operator along with a written statement of the reason(s) for disapproval. The owner or operator shall correct the deficiency within 30 days of notification of disapproval and shall resubmit the plan to the commissioner.

Subp. 4. and 5. [Unchanged.]

REVISOR INSTRUCTION. In Minnesota Rules, part 7005.0390, amend the headnote to read: "Table I: Existing Indirect Heating Equipment."; part 7005.0400, amend the headnote to read: "Table II: New Indirect Heating Equipment;" and part 7005.1850, subpart 8, amend the headnote to read: "Combined or separated emissions."

In Minnesota Rules, chapter 7002, change "director" to "commissioner" where it refers to the chief executive officer of the Pollution Control Agency.

REPEALER. Minnesota Rules, part 7002.0020, subpart 8, is repealed.

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Proposed Rules

Pollution Control Agency

Proposed Permanent Rules Relating to Air Quality Definitions and Emission Offsets

Notice of Intent to Adopt Rule Amendments Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rule amendments without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* section 14.22 to 14.28 (1986). The Agency's authority to adopt the rule amendments is set forth in *Minnesota Statutes* section 116.07, subd. 4 (1986).

All persons have until 4:30 p.m. on November 30, 1988, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rule amendments. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the Agency will proceed pursuant to *Minnesota Statutes* section 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be submitted to:

Mr. John Seltz
Minnesota Pollution Control
Division of Air Quality
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7554

The proposed rule amendments may be modified if the modifications are supported by data and views submitted to the Agency and do not result in a substantial change in the proposed rules as noticed.

The proposed rule amendments, if adopted, will conform Minnesota's Offset Rules to federal regulations pertaining to review of new or modified sources of air pollutants located in nonattainment areas. If approved by the U.S. Environmental Protection Agency, the amended rules will allow the construction of major stationary sources of air pollutants or major modifications of major stationary sources of air pollutants, in nonattainment areas or areas which affect nonattainment areas, by offsetting their emissions through obtaining reductions in emissions elsewhere in the area. The proposed rule amendments are published below. One free copy of the rule amendments is available upon request from Mr. Seltz at the address and telephone number stated above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mr. Seltz upon request.

You are hereby advised, pursuant to *Minnesota Statutes* section 14.115 (1986), "Small business considerations in rulemaking," that the proposed rule amendments will not affect small businesses. The proposed rule amendments will only affect major stationary sources (sources emitting more than 100 tons per year) or major modifications of major stationary sources in nonattainment areas or in areas that affect nonattainment areas.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rule amendments as adopted, must submit a written request to Mr. Seltz.

Gerald L. Willet, Commissioner

Rules as Proposed

7005.0100 DEFINITIONS.

Subpart 1. to 4. [Unchanged.]

Subp. 4a. **Commenced, commencement.** "Commenced" or "commencement" means that an owner or operator has ~~undertaken;~~

A. Begun, or caused to begin, a continuous program of actual on-site construction, modification, or reconstruction activities, ~~or has entered into a contractual obligation to undertake and complete, to be completed~~ within a reasonable time; ~~this program;~~ or

B. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction, modification, or reconstruction to be completed within a reasonable time.

Subp. 4b. Commissioner. “Commissioner” means the commissioner of the Pollution Control Agency.

Subp. 5. Construction. “Construction” means any physical change or change in the method of operation, including fabrication, erection, or installation, demolition, or modification of an emission facility, emissions unit, or stationary source that would result in a change in actual emissions. These activities include site clearance, grading, dredging, landfilling, installation of building supports and foundation, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparation activities that mark the initiation of the change.

Subp. 6. to 8. [Unchanged.]

Subp. 8a. Criteria pollutant. “Criteria pollutant” means any of the following: sulfur dioxide, particulate matter, nitrogen oxides, carbon monoxide, ozone, lead, and any other pollutants for which national ambient air quality standards have been established in Code of Federal Regulations, title 40, part 50, as amended, or for which state ambient air quality standards have been established in parts 7005.0010 to 7005.0080.

Subp. 9. [See Repealer.]

Subp. 10. [Unchanged.]

Subp. 10a. [See Repealer.]

Subp. 10b. Emissions unit. “Emissions unit” means each activity that emits or has the potential to emit any air contaminant or pollutant. This includes each piece of equipment, machinery, device, apparatus, activity, or any other means whereby an emission is caused to occur or has the potential to occur.

Subp. 11. and 11a. [Unchanged.]

Subp. 11b. Federally enforceable. “Federally enforceable” means enforceable by the administrator of the United States Environmental Protection Agency. Federally enforceable limitations, conditions, and requirements include requirements in or developed pursuant to Code of Federal Regulations, title 40, parts 60 and 61, requirements within any applicable state implementation plan, and any permit requirements established according to Code of Federal Regulations, title 40, section 51.166 or 52.21, or Code of Federal Regulations, title 40, part 51, subpart I.

Subp. 11c. Fugitive emissions. “Fugitive emissions” means pollutant discharges to the atmosphere that do that could not reasonably pass through a stack, chimney, or other functionally equivalent opening; at which a measurement of the emissions can be made using a Reference method other than Method 9.

Subp. 24. to 35. [Unchanged.]

Subp. 35a. Potential emissions, potential to emit. “Potential emissions” or “potential to emit” means the emissions from maximum capacity while operating at the maximum hours of operation of an emissions unit, emission facility, after control equipment has been applied, when the facility is operating at maximum design capacity and maximum hours of operation or as limited by enforceable permit conditions, whichever results in fewer emissions or stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restriction on hours of operation or on the type or amount of material combusted, stored, or processed must be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions must not be counted in determining the potential to emit of an emissions unit, emission facility, or stationary source.

Subp. 35b. to 35d. [Unchanged.]

Subp. 36a. Secondary emissions. “Secondary emissions” means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary

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emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel in transit.

In calculating the net increase in emissions from a particular physical change or change in the method of operation, secondary emissions must not be included unless they are specific, well defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions.

Subp. 37. to 42b. [Unchanged.]

Subp. 42c. Stationary source. "Stationary source" means an assemblage of all emissions units and emission facilities that belong to the same industrial grouping, are located at one or more contiguous or adjacent properties and are under the control of the same person (or persons under common control). Emissions units or emission facilities must be considered as part of the same industrial grouping if they belong to the same "major group" (that is, which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (United States Government Printing Office Stock Numbers 4101-0066 and 003-005-00176-0, respectively).

Subp. 44. [See Repealer.]

7005.3020 SCOPE.

Except as provided in the paragraph below, Parts 7005.3010 to 7005.3060 apply to persons who propose to construct or modify a subject emission facility, as defined in part 7005.3030, subpart 18 a major stationary source or major modification in a nonattainment area and to persons who propose to construct a major stationary source or major modification the emissions from which would affect a nonattainment area.

Parts 7005.3010 to 7005.3060 do not apply in nonattainment areas of the state for which a plan has been developed and approved by the agency and the United States Environmental Protection Agency as providing sufficient emission reductions to both:

- A. bring the area into attainment with the national primary ambient air quality standards by December 31, 1982; and
- B. allow for an increase in emissions in the nonattainment area during that period of time the area is designated nonattainment.

7005.3030 DEFINITIONS.

Subpart 1. Scope. The definitions in parts part 7005.0100 to 7005.0180 apply to the terms used in parts 7005.3010 to 7005.3060 unless the terms are defined herein. For the purposes of these parts, the following words have the meanings defined below.

Subp. 1a. Actual emissions. "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with the following conditions:

A. Actual emissions as of a particular date equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period that precedes a particular date and that is representative of normal stationary source operation. The commissioner shall allow the use of a different time period upon determining that it is more representative of normal stationary source operation. Actual emissions must be calculated using the stationary source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

B. The commissioner shall presume that the stationary source's specific allowable emissions for the unit are equivalent to the actual emissions of the unit unless the commissioner finds that reliable evidence demonstrates that actual emissions differ from the allowable emissions.

C. For any emissions unit that has not begun normal operations on a particular date, actual emissions must equal the potential to emit of the unit on that date.

Subp. 1b. Affect, affected.

A. For a new or modified stationary source proposed to be located in a nonattainment area, "affect" or "affected" means that the emissions from the new or modified stationary source have ambient air quality impacts which are equal to or exceed the levels in Code of Federal Regulations, title 40, section 51.165(b)(2), as amended.

B. For a new or modified stationary source proposed to be located adjacent to a nonattainment area, "affect" or "affected" means that the emissions from the new or modified stationary source have ambient air quality impacts which are equal to or exceed the levels in Code of Federal Regulations, title 40, section 51.165 (b)(2), as amended, at a location within a nonattainment area that exceeds ambient air quality standards or will exceed ambient air quality standards due to the emissions from the new or modified stationary source.

C. The area that would be affected by a major stationary source or major modification is defined as follows:

(1) For new or modified stationary sources proposed to be located in nitrogen oxide or ozone nonattainment areas or in an air quality region adjacent to a nitrogen oxide or ozone nonattainment area, the area that would be affected by the nitrogen

oxide or ozone emitted by the new or modified stationary source is the nonattainment area in which the new or modified stationary source is located or to which it is adjacent.

(2) For a new or modified stationary source proposed to be located in an area designated as nonattainment for a criteria pollutant not listed in item A, or located in an air quality region adjacent to that nonattainment area, the area that would be affected by the nonattainment criteria pollutant emitted by the new or modified stationary source is the area that modeling analysis performed in accordance with part 7005.3040, subpart 3, demonstrates to be affected by the emissions from the new or modified stationary source.

Subp. 2. **Air quality control region.** "Air quality control region" means any of the seven geographic areas specified by the agency for administrative purposes based on jurisdictional boundaries, urban and industrial concentrations, climate, meteorology, topography, and other factors affecting the interchange and diffusion of pollutants in the atmosphere. These are ~~identified~~ described in Code of Federal Regulations, title 40, section ~~52.1224 (1980)~~ 81.324, as amended.

Subp. 2a. **Allowable emissions.** "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the stationary source (unless the stationary source is subject to federally enforceable limits) and the most stringent of the following:

A. the applicable standards in Code of Federal Regulations, title 40, parts 60 and 61;

B. the applicable state implementation plan emissions limitation, including those with a future compliance date; or

C. the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

Subp. 2b. **Ambient air quality standards.** "Ambient air quality standards" means any of the national ambient air quality standards or state ambient air quality standards relating to the primary (health related) or secondary (welfare related) air pollutant concentrations in:

A. Code of Federal Regulations, title 40, part 50, as amended; and

B. parts 7005.0010 to 7005.0080.

Subp. 3. and 4. [See Repealer.]

Subp. 5. **Lowest achievable emission rate.** "Lowest achievable emission rate" means, for any ~~emission facility~~ stationary source, the more stringent rate of emissions based on the following:

A. the most stringent emission limitation contained in the implementation plan of any state for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable;
or

B. the most stringent emission limitation or standard of performance that is achievable achieved in practice by that class or category of emission facility stationary source. This limitation, when applied to a modification, means the lowest achievable emission rate for the new or modified emission units within the stationary source. In no case shall the lowest achievable emission rate be construed to allow emissions in excess of any applicable standard. The emission limitation specified in any other state's plan shall be presumed to be achievable in practice unless a person demonstrates to the director that the emission limitation or standard of performance is not achievable for reasons other than economic costs application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source performance standard as promulgated under section 111 of the Clean Air Act of 1977, United States Code, title 42, section 7411.

Subp. 6. **Major modification, modified.** "Major modification" or "~~modified~~" means any physical change in, change in the method of operation of, or addition to an ~~emission facility~~ a major stationary source which would result in a significant net emissions increase in emissions of any criteria pollutant. As used in parts 7005.3010 to 7005.3060, the term modification or modified Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone. A physical change or change in the method of operation does not include:

A. routine maintenance, repair, or replacement;

B. changes in method or hours of operation unless the changes are disallowed by an agency rule, stipulation agreement, permit or order, or by a court order;

C. increases in production rates unless the increases exceed the operating design capacity of any emission facility;

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D. use of a fuel generated from municipal solid waste in a steam generating unit;

E. a change in ownership; or

F. use of a an alternate fuel or raw material in an emission facility that:

(1) was designed to accommodate the use prior to December 21, 1976; or

(2) is commencing or has commenced the fuel or raw material use pursuant to a stationary source by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, United States Code, title 15, section 792 (1980), under as amended, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act, United States Code, title 16, section 791a et seq. (1980), or under as amended;

C. use of an alternative fuel by reason of an order or rule adopted or issued under section 125 of the Clean Air Act of 1977, United States Code, title 42, section 7425 (1980), as amended;

D. use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

E. use of an alternative fuel or raw material by a stationary source which:

(1) the source was continuously physically capable of accommodating before, on, and after December 21, 1976, unless the change would be prohibited under any federally enforceable permit condition that was established after December 21, 1976, in accordance with Code of Federal Regulations, title 40, section 52.21 or in accordance with an agency rule approved by the United States Environmental Protection Agency under Code of Federal Regulations, title 40, part 51, subpart I, or Code of Federal Regulations, title 40, section 51.166; or

(2) the stationary source is approved to use under a permit issued pursuant to parts 7005.3010 to 7005.3060.

F. an increase in the hours of operation or in the production rate, unless the change is prohibited under any of the following:

(1) a federally enforceable permit condition established after December 21, 1976, in accordance with Code of Federal Regulations, title 40, section 52.21 or in accordance with an agency rule approved by the United States Environmental Protection Agency under Code of Federal Regulations, title 40, part 51, subpart I, or Code of Federal Regulations, title 40, section 51.166;

(2) an agency rule;

(3) a stipulation agreement;

(4) an order of the agency of the United States Environmental Protection Agency; or

(5) a court order; or

G. any change in ownership at a stationary source.

Subp. 7. [Unchanged.]

Subp. 7a. Major stationary source.

A. "Major stationary source" means:

(1) any stationary source that emits, or has the potential to emit, 100 tons per year or more of any criteria pollutant; or

(2) any physical change, change in the method of operation, or addition that is proposed to occur at a stationary source not qualifying under item A as a major stationary source if the change will result in additional emissions or potential emissions from the stationary source of 100 tons per year or more of any criteria pollutant.

B. A major stationary source that is major for volatile organic compounds must be considered major for ozone.

C. The fugitive emissions of a stationary source must not be included in determining whether the stationary source is a major stationary source unless the stationary source belongs to one of the categories listed in Code of Federal Regulations, title 40, section 51.165(a)(iv)(C).

Subp. 8. **Net air quality benefit.** "Net air quality benefit" means that, in the area that would be affected by the subject emission facility stationary source, offsets proposed to be obtained by a person pursuant to part 7005.3040, subpart 2 are sufficient to result in a net reduction, on both a pounds per hour and tons per year basis, in both the rate of emissions and a reduction in the ambient concentration of nonattainment criteria pollutants. The commissioner shall determine whether the net air quality benefit represents reasonable further progress toward compliance with ambient air quality standards.

The area that would be affected by the subject emission facility is defined as follows:

A. for subject emission facilities proposed to be located in carbon monoxide, nitrogen oxide, nonmethane hydrocarbon, or ozone nonattainment areas, the area that would be affected by the subject emission facility is the air quality control region in which the subject emission facility is proposed to be located; and

B. for subject emission facilities proposed to be located in sulfur dioxide, particulate matter, or lead nonattainment areas, the area that would be affected by the subject emission facility is the area that the modeling analysis, performed in accordance with part 7005.3040, subpart 3, demonstrates to be affected by the subject emission facility.

Where the major stationary source or major modification is proposed to be located in a nonattainment area without a state implementation plan or at a location where the emissions from the major stationary source or major modification would affect a nonattainment area without a state implementation plan, the director commissioner shall not find that there is will be a net reduction in both the rate of emissions and the concentration of nonattainment criteria pollutants if air quality benefit unless Y divided by X is equal to or greater than ~~1~~ 1.2, where:

X = the restricted potential to emit emissions on a tons per year and pounds per hour basis to which the subject emission facility major stationary source or major modification will be limited; and

Y = the offsets, equal to the lower of actual or allowable emissions, on a tons per year and pounds per hour basis, to be provided by the person proposing the subject emission facility major stationary source or major modification.

Subp. 9. Net increase or decrease in emissions. "Net increase or decrease in emissions" means the net number of new tons per year of a nonattainment criteria pollutant that could be legally discharged from a subject emission facility. In determining the net increase in emissions, the director shall include all nonattainment criteria pollutant discharges that the subject emission facility could emit but shall give a credit for:

A. all legally enforceable restrictions on or reductions of the nonattainment criteria pollutant discharges from the subject emission facility (such as a restriction on nonattainment criteria pollutant discharges that would result from installing required pollution control equipment); and

B. any other restrictions on or reductions of the nonattainment criteria pollutant discharges that the person proposing the subject emission facility both obtains within the same plant and agrees to include within the terms of any permit issued for the subject emission facility; any net increase or decrease in actual emissions from a particular physical change or change in the method of operation at a stationary source. Determination of a net increase or decrease in emissions is governed by the following:

A. A net emissions increase is the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) any other increases and decreases in actual emissions at the stationary source that are contemporaneous with the particular change and are otherwise creditable.

B. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs before the date that the increase from the particular change occurs.

C. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if:

(1) it occurs between the date five years before construction on the particular change commences; and

(2) the date that the increase from the particular change occurs.

D. An increase or decrease in actual emissions is creditable only if the commissioner has not relied on it in issuing a permit for the stationary source in accordance with rules approved by the United States Environmental Protection Agency under Code of Federal Regulations, title 40, part 51, subpart I, where the permit is in effect when the increase in actual emissions from the particular change occurs.

E. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

F. A decrease in actual emissions is creditable only to the extent that all of the following conditions are met:

(1) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) it is federally enforceable at and after the time that actual construction on the particular change begins;

(3) the commissioner has not relied on it in issuing any permit in accordance with rules approved by the United States

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Environmental Protection Agency under Code of Federal Regulations, title 40, part 51, subpart I, or relied on it in demonstrating attainment or reasonable further progress; and

(4) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

G. An increase that results from a physical change at a stationary source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

Subp. 10. **Nonattainment area.** "Nonattainment area" means any geographic region that has been:

A. designated by the agency as violating a state ambient air quality standard; or national ambient air quality standard or

B. designated by the United States Environmental Protection Agency as violating a national ambient air quality standard in Code of Federal Regulations, title 40, section 81.324, as amended.

Subp. 11. **Nonattainment criteria pollutants.** "Nonattainment criteria pollutants" means as follows:

A. for all nonattainment areas except ozone nonattainment areas, nonattainment criteria pollutant means the criteria pollutant for which an area is designated nonattainment; and

B. for ozone nonattainment areas, nonattainment criteria pollutant means ~~nonmethane hydrocarbons~~ volatile organic compounds.

Subp. 12. **Offsets.** Offsets are governed by the following provisions:

A. "Offsets" means any documented ~~reductions~~ reduction in restricted the lower of actual or allowable emissions of nonattainment criteria pollutants that:

A. are legally (1) for pollutants for which national ambient air quality standards have been established, is federally enforceable; and

~~B. are (2) is~~ achieved after August 7, 1977, or after the date of completion of the emission inventory used by the agency in developing the most recent revision to the plan, whichever is later;

(3) occurs prior to start of operation of the proposed major stationary source or major modification; and

(4) if needed to meet the ozone standard, results from reductions in volatile organic compounds.

B. Credit for offsets achieved by shutting down an existing stationary source or permanently curtailing production or operating hours below baseline levels is governed by Code of Federal Regulations, title 40, section 51.165(a)(3)(ii)(C), as amended.

C. Credit for an emission reduction can be claimed to the extent that the agency has not previously relied on it in issuing any permit in accordance with parts 7005.3010 to 7005.3060; or the commissioner has not relied on it in demonstrating to the United States Environmental Protection Agency attainment or reasonable further progress.

D. No emissions credit may be allowed for replacing one volatile organic compound with another of lesser reactivity, except for those compounds listed in Table 1 of the United States Environmental Protection Agency's Recommended Policy on Control of Volatile Organic Compounds in Federal Register, volume 42, page 35314, July 8, 1977, as amended.

E. No emissions credit may be allowed unless procedures relating to the permissible location of offsetting emissions have been followed that are at least as stringent as those in Code of Federal Regulations, title 40, part 51, appendix S, section IV.D, as amended.

F. The offset baseline is either the stationary source's actual emissions or the potential to emit, as determined by the state implementation plan in effect on the date the commissioner determines that a complete application to construct has been filed with the agency, except that the offset baseline is the actual emissions of the stationary source from which offset credit is obtained where:

(1) the demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions from stationary sources located within a designated nonattainment area; or

(2) there is no applicable state implementation plan approved by the United States Environmental Protection Agency, or the state implementation plan does not contain an emissions limitation for that stationary source or stationary source category.

G. If the emissions limit under the applicable state implementation plan allows greater emissions than the potential to emit of the stationary source, emissions credit must be allowed only for control below the potential to emit of the stationary source.

H. For an existing fuel combustion source, credit must be based on the lower of actual or allowable emissions under the applicable state implementation plan for the type of fuel being burned at the time the application to construct is filed. If the existing stationary source commits to switch to a cleaner fuel at some future date, emissions offsets based on the cleaner fuel must not be

credited unless the permit is conditioned to require the use of a specified alternative control measure that would achieve the same degree of emissions reductions should the stationary source switch back to a dirtier fuel at some date. The commissioner shall not grant emissions offset credit for fuel switches unless the owner or operator of the fuel combustion source has demonstrated that adequate long-term supplies of the cleaner fuel are available.

Subp. 13. **Plan, state implementation plan.** "Plan" or "state implementation plan" means any state air quality control laws, rules, permits, stipulation agreements, and procedures, ~~developed~~ adopted or issued by Minnesota to insure ensure compliance with ~~state and national~~ state and national ambient air quality standards and approved by the United States Environmental Protection Agency under section 110 of the Clean Air Act, United States Code, title 42, section 7410.

Subp. 14. [See Repealer.]

Subp. 14a. **Reasonable further progress.** "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant that:

A. the administrator of the United States Environmental Protection Agency has determined are sufficient to provide for attainment of the applicable national ambient air quality standard in Code of Federal Regulations, title 40, part 50; and

B. the commissioner has determined are sufficient to provide for attainment of the applicable state ambient air quality standards in parts 7005.0010 to 7005.0080.

Subp. 15. to 19. [See Repealer.]

Subp. 19a. **Significant emissions increase.** "Significant emissions increase" means a net increase in emissions or the potential of a stationary source to emit any of the listed pollutants that would equal or exceed any of the rates of emissions in Code of Federal Regulations, title 40, part 51, Appendix S, Part II.A.10(i), as amended. Any net emissions increase that is considered significant for volatile organic compounds must be considered significant for ozone.

Subp. 20. **Volatile organic compounds.** "Volatile organic compounds" means any organic compound that participates in atmospheric photochemical reaction; that is, any organic compound other than those which the United States Environmental Protection Agency has designated as having negligible photochemical reactivity. Volatile organic compounds must be measured by a reference method, an equivalent method, an alternative method, or by procedures specified under Code of Federal Regulations, title 40, part 60. In cases where a reference method, equivalent method, or alternative method also measures nonreactive organic compounds, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard. As used in parts 7005.3010 to 7005.3060, the term "volatile organic compounds" does not include:

A. Methane;

B. Ethane;

C. 1,1,1-Trichloroethane (Methyl Chloroform);

D. Trichlorotrifluoroethane (Freon 113);

E. Methyl chloroform;

F. Methylene Chloride;

G. Trichlorofluoromethane (CFC-11);

H. Dichlorodifluoromethane (CFC-12);

I. Chlorodifluoromethane (CFC-22);

J. Trifluoromethane (FC-23);

K. Trichlorotrifluoroethane (CFC-113);

L. Dichlorotetrafluoroethane (CFC-114);

M. Chloropentafluoroethane (CFC-115);

N. any other compound listed in table 1, as amended, of the United States Environmental Protection Agency's Recommended Policy on Control of Volatile Organic Compounds, Federal Register, volume 42, page 35314, July 8, 1977; or

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O. any other compound determined by the United States Environmental Protection Agency to be negligibly photochemically reactive. These determinations are published in the Federal Register.

7005.3040 CONDITIONS FOR PERMIT.

Subpart 1. **In general.** ~~Except as provided in subpart 6, the agency shall not issue permits for any subject emission facility unless the permit applicant has satisfied~~ No person shall commence construction of a major stationary source or major modification in a nonattainment area or at a location where the emissions from the new or modified stationary source would affect a nonattainment area without obtaining an air emission permit and satisfying the conditions in subparts 2 to 4. All permits issued for ~~subject emission facilities major stationary sources or major modifications in a nonattainment area or at a location that would affect a nonattainment area~~ shall contain the conditions ~~set forth~~ in subpart 5.

Subp. 2. **Requirement to get obtain offsets.** ~~Prior to constructing or modifying a subject emission facility, except an emission facility that is intended to be located in a nonattainment area for less than two years, Before commencement of construction of a major stationary source or major modification in a nonattainment area or at a location where the emissions from the new or modified stationary source would affect a nonattainment area and in order to achieve reasonable further progress, the owner or operator of that facility major stationary source or major modification shall obtain offsets for all emissions of nonattainment criteria pollutants that will result from for which the construction or modification will result in a significant net emissions increase. An emission facility that was intended to be located in the nonattainment area for less than two years but that remains for two years or more shall be subject to all the applicable requirements of these parts.~~

Subp. 3. **Requirement to demonstrate a net air quality benefit.** ~~Prior to constructing~~ Before commencement of construction of a major stationary source or modifying a subject emission facility major modification in a nonattainment area or at a location where the emissions from the new or modified stationary source would affect a nonattainment area, the permit applicant shall demonstrate that the offsets to be provided are sufficient to result in a net air quality benefit, as defined in part 7005.3030, subpart 8.

A. ~~For subject emission facilities major stationary sources or major modifications located or proposed to be located in carbon monoxide, nitrogen oxide, nonmethane hydrocarbon, or ozone nonattainment areas, or at a location where the emissions from the new or modified stationary source would affect a nitrogen oxide or ozone nonattainment area, a permit applicant shall not be required to need not perform a modeling analysis to demonstrate net air quality benefit but shall submit to the agency a detailed statement of all information that the director commissioner needs in order to be able to determine whether a net air quality benefit will result from the construction or modification.~~

B. ~~Except as provided in item C, for subject emission facilities major stationary sources or major modifications located or proposed to be located in sulfur dioxide or particulate matter or lead nonattainment areas other than nitrogen oxide or ozone nonattainment areas, or at a location where the emissions from the new or modified stationary source would affect a nonattainment area other than a nitrogen oxide or ozone nonattainment area, a permit applicant shall perform a modeling analysis to determine whether the offsets to be provided are sufficient to result in a net air quality benefit, shall analyze the data obtained and shall submit to the agency the modeling data, the modeling analyses, a detailed description of the system of continuous emission reduction planned, and emission estimates made, together with any other information that the director commissioner needs in order to be able to determine whether a net air quality benefit will result from the construction or modification. All modeling shall be performed in accordance with "Guidelines on Air Quality Models" (OAQPS No. 1-2-080 EPA-450/2-78-027R, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, 4978 July 1986, as amended by supplemental updates) or methods that the director commissioner finds to be comparably reliable.~~

C. If a major stationary source or major modification is located or proposed to be located in a nonattainment area other than a nitrogen oxide or ozone nonattainment area, or at a location where the emissions from the new or modified stationary source would affect a nonattainment area other than a nitrogen oxide or ozone nonattainment area, the permit applicant is exempt from the requirement to perform a modeling analysis to demonstrate net air quality benefit if all of the following conditions are met:

(1) the emission offsets are obtained from an existing stationary source on the same premises or within 250 meters of the new or modified stationary source;

(2) the pollutants increased do not disperse from any emissions unit with a lower effective plume height than the emissions unit from which the decrease in pollutants is obtained. Lower effective plume height must be determined according to "Guidelines on Air Quality Models," adopted by reference in subpart 8; and

(3) the offset is equal to or greater than 120 percent of the potential to emit of the proposed major stationary source or major modification.

A permit applicant exempt from the requirement to perform a modeling analysis must demonstrate net air quality benefit in the manner described in item A.

Subp. 4. ~~Requirement to certify for compliance. Prior to constructing or modifying~~ Before issuance of an agency permit to construct or modify a subject emission facility major stationary source or major modification in a nonattainment area or at a location where the emissions from the new or modified stationary source would affect a nonattainment area, the permit applicant shall certify demonstrate that all emission facilities existing stationary sources in Minnesota which are either owned or operated in whole or in part by the same person for whom the application is made or which are operated under the common control of the same person for whom the application is made are in compliance with or are on a federally approved compliance schedule to meet all applicable emission limitations and standards established under the Clean Air Act, United States Code, title 42, sections 7401 to 7626 and in the state implementation plan.

Subp. 5. Permit conditions. Any permit issued for a subject emission facility major stationary source or major modification in a nonattainment area or at a location where the emissions from the new or modified stationary source would affect a nonattainment area shall include a provision that:

A. Limits emissions from the facility stationary source as follows:

(1) The owner or operator of a subject emission facility major stationary source or major modification shall install technology control equipment that restricts emissions from the facility major stationary source or major modification to the lowest achievable emission rate of the nonattainment criteria pollutants for which the facility stationary source is subject to these parts. The permit shall expressly describe the lowest achievable emission rate for the class or category of emission facility stationary source into which the subject emission facility major stationary source or major modification falls.

(2) The director commissioner shall waive the requirement of this subpart an emission rate if the director commissioner determines that a performance standard based on design, equipment, work practice, operation, maintenance, or other alternative standard is more practicable than an emission rate.

B. States that the offsets that the subject emission facility owner or operator of the major stationary source or major modification has obtained in order to be issued a permit under these parts 7005.3010 to 7005.3060 are legally enforceable by the agency and by the United States Environmental Protection Agency federally enforceable at and after the time the permit is issued.

Subp. 6. [See Repealer.]

Subp. 7. Stationary source obligation. When a particular stationary source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation that was established after August 7, 1980, on the capacity of the stationary source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the requirements of parts 7005.3010 to 7005.3060 apply to the owner or operator as though construction had not commenced on the stationary source or modification.

Subp. 8. Incorporation by reference. The following publication by the United States Environmental Protection Agency is incorporated by reference: "Guidelines on Air Quality Models," EPA-450/2-78-027R, as amended by supplemental updates, written and published by the USEPA, Office of Air and Radiation, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711. The guidelines are subject to frequent change and are available from the Minnesota State Law Library, Ford Building, 117 University Avenue, St. Paul, Minnesota 55155.

7005.3050 BANKING.

A person who has obtained a reduction in the amount of restricted emissions emitted from an emission facility the lower of actual or allowable emissions a stationary source shall be permitted to bank that reduction for future use as an offset as allowed by these parts 7005.3010 to 7005.3060 under the following circumstances, limitations, and conditions. ~~Parts 7005.3010 to 7005.3060 authorize a person to bank only those reductions in emissions that:~~

A. ~~were obtained after August 7, 1977, but prior to the effective date of these parts and that are reported to the agency within six months of the effective date of these parts; or~~

B. ~~are obtained after the effective date of these parts.~~

In order to be eligible for banking and to assure that emission trades do not contravene applicable requirements of the Clean Air Act, the emission reductions shall be final and enforceable, either through the terms of a stipulation agreement, permit, or other legal instrument obtained by an owner of a facility the stationary source or through a permanent, physical alteration of the facility stationary source. No person shall cease to maintain emission reductions that were obtained to provide offsets for a new or modified stationary source.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."
ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Proposed Rules

B. In order to be able to bank reductions in emissions, the person obtaining those reductions shall report to the director commissioner the amount and location of the banked emissions and the time at which the banked emissions have become permanently and finally implemented.

The report shall be made C. A person may bank only those reductions in emissions that:

(1) were obtained after August 1977, but before October 27, 1981, and that were reported to the agency within six months of October 21, 1981; or

(2) are obtained after October 27, 1981, and are reported within six months after the reductions have become final and enforceable or within six months after these parts have been adopted, whichever is later.

7005.3060 LIMITATION ON USE OF OFFSETS.

To the extent that these parts ~~creates~~ create a program for the use of offsets or ~~allows~~ allow persons to purchase or obtain offsets, ~~these parts 7005.3010 to 7005.3060~~ shall not be construed to create a property right that requires compensation from the state should offsets later become unusable due to a change in an applicable emission limitation or standard of the agency.

REVISOR INSTRUCTION. In Minnesota Rules, chapters 7001 and 7005, change "director" to "commissioner" where it refers to the chief executive officer of the Pollution Control Agency.

REPEALER. Minnesota Rules, parts 7005.0100, subparts 9, 10a, and 44; 7005.3030, subparts 3, 4, 14, 15, 16, 17, 18, and 19; and 7005.3040, subpart 6, are repealed.

Emergency Rules

Proposed Emergency Rules

According to Minn. Stat. of 1984, §§ 14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

- 1) that a free copy of the proposed emergency rule is available upon request from the agency;
- 2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
- 3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
- 4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§ 14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

Board of Unlicensed Mental Health Service Providers

Proposed Emergency Rules Relating to Unlicensed Mental Health Service Providers

Notice of Intent to Adopt Emergency Rules

NOTICE IS HEREBY GIVEN that the State Board of Unlicensed Mental Health Service Providers intends to adopt the above entitled emergency rules. The statutory authority to adopt the emergency rules is contained in *Minnesota Statutes*, 1987, Chapters 148B.171 and 148B.40 to 148B.47. The Board, in adopting the rules, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in *Minnesota Statutes*, sections 14.29 to 14.36.

All persons have 25 days after publication in which to submit comment in support of or in opposition to the proposed rules, or any part or subpart of the rules, in writing. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any comments must be submitted to:

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114
(612) 649-5490

The proposed emergency rules may be modified if the modifications are supported by data and views submitted to the board and do not result in a substantial change in the proposed emergency rules as noticed.

A copy of the proposed emergency rules is attached to this notice.

A free copy of the proposed emergency rules is available upon request from Robert Sullivan at the above mentioned address or phone number, or from the:

Office of Social Work and Mental Health Boards
2700 University Avenue West, Suite 225
St. Paul, MN 55114
(612) 643-2580

Upon adoption of the emergency rules by the Board, the rules and the supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Robert A. Sullivan at the above mentioned address.

The emergency rule will take effect five working days after approval by the Attorney General and will be effective for 180 days. The emergency rules will continue in effect for an additional 180 days if the Board gives notice of continuation in accordance with *Minnesota Statutes*, section 14.35.

Dated: 19 October 1988

Robert A. Sullivan
Executive Director

Rules as Proposed (all new material)

9000.0050 [Emergency] PURPOSE.

Parts 9000.0100 to 9000.0200 [Emergency] establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a central registry of persons who provide or purport to provide mental health services.

9000.0100 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 9000.0100 to 9000.0200 [Emergency], the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person who applies to file as a mental health service provider with the board.

Subp. 3. **Board.** "Board" means the Board of Unlicensed Mental Health Service Providers.

Subp. 4. **Mental health services.**

A. "Mental health services" means the provision of any assessment, diagnosis, treatment, counseling, or therapy including guidance, pastoral, addiction, abuse, psychotherapy, hypnotherapy or hypnoanalysis, personal analysis, or other services for remuneration.

Mental health services are services which are designed to alleviate symptoms, reduce disturbed patterns of behavior, enhance intrapsychic awareness, and increase ability of the individual to adapt to and cope with internal and external stress.

Mental health services must use interpersonal, intrapsychic, or behavioral methods. Mental health services may be provided to individuals, families, or groups who are experiencing a problem behavior; have social, interpersonal, or intrapersonal dysfunction; or have cognitive or emotional distress, unwanted anxiety, or other mental or psycho-physiological problems which they seek to alleviate.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Emergency Rules

B. "Mental health services" does not include services that do not involve the services described in item A, and that are:

- (1) primarily for entertainment; or
- (2) educational, informational, or spiritual.

C. "Mental health services" does not include the following areas of practice unless the primary focus is the provision of services as defined in item A: educational, vocational, or career guidance; and spiritual counseling or pastoral care of a congregation by clergy when the care is not related to the provision of mental health services described in item A.

Subp. 5. **Provider.** "Provider" means a person who provides or purports to provide mental health services for remuneration. Mental health service providers include the following:

A. counselor (crisis, eating disorder, compulsion, phobia or anxiety, drug and alcohol, mental health, pastoral, sexual and physical abuse);

B. social worker or marriage and family therapist, if the person is exempt from licensure under *Minnesota Statutes*, section 148B.28, subdivision 4, 5, or 6, or 148B.38;

C. school and college counselor if the counselor is providing mental health services as defined in subpart 4;

D. rehabilitation officer or counselor, if the person provides mental health services as defined in subpart 4;

E. therapist (child care, educational, new age, holistic, dance, music, or recreational if the therapist is providing mental health services as defined in subpart 4);

F. hypnotist or hypnotherapist;

G. behavior modification practitioner or analyst; and

H. any other person, regardless of title, providing mental health services for remuneration who is not exempt from filing, or is not one of the licensed providers described in *Minnesota Statutes*, section 148B.40, subdivision 3.

Subp. 6. **Remuneration.** "Remuneration" means a fee, salary, gift, reward, compensation, or the expectation of payment for providing mental health services.

Subp. 7. **Variance.** "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

9000.0110 [Emergency] REQUIREMENT TO FILE.

Subpart 1. **Who must file.** A provider of mental health services for remuneration must file with the board on the forms provided, unless specifically excluded from filing by law or by subpart 2.

The application for filing must contain the information required according to *Minnesota Statutes*, sections 148B.06, subdivision 3; and 148B.42.

Subp. 2. **Exclusions from filing.** Persons excluded from filing under subpart 1 include:

A. a person who is specifically excluded from the definition of mental health service provider in *Minnesota Statutes*, section 148B.40, subdivision 3;

B. a person who is not providing mental health services as defined in part 9000.0100, subpart 4 [Emergency]; and

C. a person who is not providing mental health services for remuneration.

Subp. 3. **Requirement to file within 120 days.** A provider who is providing mental health services on the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to file with the board within 120 days after the effective date of parts 9000.0100 to 9000.0200 [Emergency].

A provider who wishes to provide mental health services after the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to the board and receive acknowledgment of the filing as provided in part 9000.0130 [Emergency] before providing services.

Subp. 4. **Late fees.** A provider who is providing mental health services when parts 9000.0100 to 9000.0200 [Emergency] become effective, and who fails to file within the 120-day limit in subpart 3, must pay the late filing fee and the regular filing fee specified in part 9000.0200 [Emergency].

9000.0120 [Emergency] PROCEDURE FOR FILING.

Subpart 1. **Application.** The application for filing must:

A. be made to the board on the forms provided by the board;

B. include an affirmation from the applicant that the statements are true and correct to the best of the applicant's knowledge and belief;

C. be accompanied by a nonrefundable application fee specified in part 9000.0200 [Emergency];

D. be accompanied by a written authorization for the board to make inquiries to the appropriate regulatory agency in any other state where the applicant has provided mental health service, about the applicant's malpractice history, if any;

E. be accompanied by a written authorization for the board to inquire about the malpractice history of the applicant at the National Clearing House for Licensure, Enforcement, and Regulation; and

F. be completed in sufficient detail for the board to determine if the applicant meets the requirements for filing. The board may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subp. 2. Requirements to maintain current information. A provider must notify the board within 30 days of occurrence of the following:

A. a change of name, address, or phone number (home and business);

B. a conviction of a crime against persons, or of a crime reasonably related to the provision of mental health service;

C. a settlement or award based on malpractice by the provider;

D. a physical or mental disability that may affect a provider's ability to practice; and

E. other factors that may reasonably be construed to affect public safety.

The board may take an adverse action under *Minnesota Statutes*, section 148B.45, against a filer who fails to meet the requirements of this notice.

9000.0130 [Emergency] ACKNOWLEDGMENT OF FILING.

When an applicant has satisfied the requirements of filing, the board will issue a written "Acknowledgment of Filing" to the applicant. The "Acknowledgment of Filing" is a written statement that the applicant has met the requirements for filing under parts 9000.0100 to 9000.0200 [Emergency]. This acknowledgment is personal and is not transferable to another person. It may not be displayed or published in any way.

9000.0140 [Emergency] DENIAL OF FILING.

Subpart 1. Grounds for denial. An application for filing may be denied by the board if:

A. the application does not contain the information necessary for filing as determined by *Minnesota Statutes*, sections 148B.06, subdivisions 1 to 3, and 148B.42, subdivision 1, and the applicant has not provided the required information within 60 days of application;

B. the applicant has presented false or misleading information on the application;

C. the applicant fails to fully disclose disciplinary actions taken in another state or province;

D. the applicant fails to notify the board of disciplinary action taken against the applicant by a licensing, certifying, or registering authority;

E. the applicant fails to authorize the board, as required in part 9000.0120 [Emergency], subpart 1, item D, to obtain information from the appropriate regulatory agency in any other state or foreign government where the individual has provided mental health services; or

F. the applicant has engaged in behavior that is specifically prohibited under *Minnesota Statutes*, section 148B.44.

Subp. 2. Criminal conviction. If the applicant has been convicted of a crime listed under *Minnesota Statutes*, section 148B.44, subdivision 1, paragraph (a) or (b), the board shall follow the standards and procedures in *Minnesota Statutes*, chapter 364, in determining whether to approve or deny an application for filing.

Subp. 3. Notice of denial. The board must notify an applicant, in writing, of a denial of an application for filing and the reasons for the denial. If the board denies an application for filing for reasons described in subpart 2, the board's notice must meet the requirements of *Minnesota Statutes*, section 364.05. An application submitted after a denial is a new application and must be accompanied by a new filing fee.

9000.0150 [Emergency] TERM OF FILING.

A filing is valid for one year. The year begins with the date on which the filing is acknowledged, according to part 9000.0130 [Emergency], or reissued after suspension, and ends one year later on the last day of the month in which the filing was acknowledged. The filing must be renewed each year.

Emergency Rules

9000.0160 [Emergency] RENEWAL OF FILING.

Subpart 1. **Renewal notice.** At least 31 days before the date the filing ends, according to part 9000.0150 [Emergency], the board shall send a renewal notice to the last known address of the provider. The notice must inform the provider of the requirement to renew the provider's filing and pay the current renewal fee by the deadline determined in subpart 2. If the provider does not receive the notice, the provider is still obligated to complete a renewal application and pay the renewal fee specified in part 9000.0200 [Emergency] within the deadline in subpart 2. The renewal application must be made on the forms provided by the board.

Subp. 2. **Renewal deadline.** The provider must submit to the board the renewal application and the annual renewal fee required in part 9000.0200 [Emergency]. The renewal application must be submitted or postmarked on or before the date the filing ends according to part 9000.0150 [Emergency]. The renewal application must include an affirmation by the provider that the statements on the form are true and correct to the best knowledge and belief of the provider.

Subp. 3. **Late fees.** A provider seeking renewal must pay the renewal fee and the late fee if the application for renewal is submitted or postmarked after the time period specified in subpart 2.

The late fee must accompany applications of practicing mental health service providers not made within 90 days of the effective date of this part.

Subp. 4. **Expiration of filing.** A filing expires if it is not renewed with the board within the deadline in subpart 2. A filing may be reissued following expiration only if the provider submits a new application and pays the regular and the late filing fees required in part 9000.0200 [Emergency].

9000.0170 [Emergency] BILL OF RIGHTS.

A provider of mental services must provide clients with the client's bill of rights as required under *Minnesota Statutes*, section 148B.46, including the right to choose freely among available providers. For clients incarcerated in a correctional facility or committed to an institution under a court order, "available providers" means those providers who provide services in the correctional facility in which the client is incarcerated or in the institution to which the client is committed.

9000.0190 [Emergency] VARIANCES.

Subpart 1. **Grounds for variance; variance application.** A filer or applicant may petition the board for a time limited variance from provisions in parts 9000.0100 to 9000.0200 [Emergency], except for a provision that incorporates a statutory requirement. The petition must be in writing. The board shall grant a variance if the filer or applicant specifies alternative practices or measures equivalent to or superior to those in the rule in question and provides evidence that:

- A. the rationale for the rule in question can be met or exceeded by the specified alternative practices or measures;
- B. adherence to the rule would impose an undue burden on the filer or applicant; and
- C. the granting of the variance will not adversely affect the public welfare.

Subp. 2. **Information required in variance petition.** A petition for a variance must contain the following information:

- A. the specific rule for which the variance is requested;
- B. the reason for the request;
- C. the alternative practices or measures that will be taken if a variance is granted;
- D. the length of time for which a variance is requested; and
- E. any other relevant information the board needs to properly evaluate the petition for the variance.

Subp. 3. **Variance compliance.** A filer or applicant who is granted a variance must comply with the alternative practices or measures specified in the petition for the variance.

Subp. 4. **Renewal of variance.** A variance shall be renewed upon reapplication for a variance, if the circumstances justifying the variance continue to exist. A filer or applicant who has been granted a variance must immediately notify the board of any material change in circumstances that justify the variance. A variance shall be revoked if there is a material change in the circumstances which justify the variance.

Subp. 5. **Burden of proof.** The burden of proof is upon the filer or applicant to demonstrate to the board, by a preponderance of the evidence, that the requirements in subpart 1 have been met.

Subp. 6. **Notice of board's decision.** The board shall notify the filer or applicant in writing when the board grants, denies, renews, or revokes a variance. The notice must state the reasons for the action. If a variance is granted, the notice shall specify the period of time for which the variance is effective, and must state the alternative practices or measures the filer or applicant must meet.

9000.0200 [Emergency] FEES.

Fees for filing as a mental health provider are as follows:

- A. the fee for an application is \$50;
- B. the fee for renewal of filing is \$50; and
- C. the fee for late filing is \$25.

Errata**Department of Agriculture****Correction to Rules Relating to Grade A and Manufacturing Grade Milk and Dairy Products**

Correction to Department of Agriculture rules proposed on July 25, 1988, at 13 *State Register*, page 165. On page 168 the repealer should have included *Minnesota Rules*, part 1525.2080.

These rules were adopted at 13 *State Register*, page 980, on October 17, 1988.

Executive Orders**Emergency Executive Order #88-12 Extending Emergency Executive Order #88-8 Providing for Transportation of Baled Hay to Drought Areas**

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, because of drought conditions existing in the state this year and the need to transport hay to affected areas of the state to provide feed for livestock; and

WHEREAS, in order to provide continued emergency assistance to Minnesota's farmers, the state is willing to waive certain permits, fees, and other obligations normally incurred by transporters;

NOW, THEREFORE, I hereby order that:

Emergency Executive Order 88-8 remain in effect until November 15, 1988.

Pursuant to *Minnesota Statutes* 1986, Section 4.035, this Order shall be effective October 14, 1988, and shall remain in effect until November 15, 1988 or until rescinded by proper authority.

IN TESTIMONY WHEREOF, I have set my hand this 14th day of October, 1988.



Rudy Perpich
Governor

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Minnesota State Agricultural Society—Minnesota State Fair

Notice of Meeting

The Board of Managers of the Minnesota State Agricultural Society, governing body of the Minnesota State Fair, will conduct a business meeting at 10 a.m. Thursday November 3rd at the Administration Building at the Fairgrounds. Preceding the general meeting will be a meeting of the board's Space Rental Committee at 9 a.m.

Minnesota State Arts Board

Board Meeting

The next regular meeting of the Minnesota State Arts Board will take place at 9:30 a.m. on Thursday, November 10, 1988 at the Arts Board offices, 432 Summit Avenue in Saint Paul. The public is invited to attend. Open meeting law guidelines will be in effect.

Department of Education

Notice of the Publication of the 1988-90 Special Education Plan for Minnesota

NOTICE IS HEREBY GIVEN of the approval of Minnesota's Special Education State Plan for P.L. 94-142 as amended by the federal Office of Special Education and Rehabilitative Services. Approval of the full plan was received in July, 1987 and amendments were approved July 11, 1988. Notice is also given that copies of the fiscal years 1988-90. P.L. 94-142 Special Education Plan, including the State Plan for Early Childhood: Special Education, are available and can be requested by phone at 612/296-4163, by mail or can be picked up at the Unique Learner Needs Section Office, 809 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101.

Department of Education

Instructional Effectiveness Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Special Education

NOTICE IS HEREBY GIVEN that the State Department of Education is seeking information or opinions from sources outside the agency in preparing to propose the adoption and amendment of the rule governing special education. The adoption of the rule is authorized by *Minnesota Statutes*, 120.17 which requires the agency to promulgate rules relative to qualifications of essential personnel, courses of study, methods of instruction, pupil eligibility, rooms, equipment, supervision, parent consultation, and any other rules it deems necessary for instruction of handicapped children. In addition, the State Board is required to specifically adopt rules for instruction and services for children under age five and their families. These rules shall provide standards and procedures appropriate for the implementation of and within the limitations of *Minnesota Statutes* § 120.17 subdivisions 3a and 3b.

The State Department of Education requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Ann Bettenburg
Minnesota Department of Education
8th Floor, Capitol Square Bldg.
550 Cedar Street
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at 612/297-3619 and in person at the above address.

All statements of information and opinions shall be accepted until November 10, 1988. Any written material received by the State Department of Education shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 17 October 1988

Robert Wedl
Deputy Commissioner

Minnesota Environmental Quality Board

Power Plant Siting Program

Notice of Annual Hearing

The Minnesota Environmental Quality Board will hold the annual public hearing on the Power Plant Siting and Transmission Line Routing Program, as required by the Power Plant Siting Act, *Minnesota Statutes* § 116.58 and *Minnesota Rules*, part 4400.4301, at 9:00 a.m., Saturday, November 19, 1988, in Conference Room 302W of the Centennial Office Building, in St. Paul, Minnesota. Parking is available in the ramp East of the building. Please use the East entrance between the ramp and the building.

The annual hearing is intended to afford interested persons an opportunity to be heard regarding any aspects of the Board's activities, duties, or policies pursuant to the Power Plant Siting Act.

All persons will be afforded the opportunity to be heard through the presentation of oral or written statements. Written statements marked for the annual hearing record may also be submitted for inclusion in the annual hearing by delivery to the Board's offices at 300 Centennial Office Building by the close of business December 2, 1988.

Direct all inquiries to:

George Durfee
Power Plant Siting Program
Minnesota Environmental Quality Board
300 Centennial Office Building
St. Paul, MN 55155
(612) 296-2878

Department of Health

Outside Opinion Sought Concerning Proposed Rules Governing the Registration of Speech-Language Pathologists, Audiologists, and Hearing Instrument Dispensers

NOTICE IS HEREBY GIVEN that the Department of Health is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing three separate registration systems for the occupations of Speech-Language Pathologists, Audiologists, and Hearing Instrument Dispensers. The promulgation of these rules is authorized by *Minnesota Statutes*, Section 214.13, subdivision 1.

All interested or affected persons or groups are invited to submit statements of information in writing or comment orally to:

Jean M. Klosowski
Rule Development Specialist
Health Systems Development
Department of Health
P.O. Box 9441
717 Delaware Street
Minneapolis, Minnesota 55440
Telephone: 612/623-5751

All statements of information and comment shall be accepted until further notice. Any written materials received by the Department of Health shall be made part of the rulemaking record.

Department of Health

Outside Opinion Sought Concerning a Proposed Rule Governing the Requirement of Hearing Aid Dealers to Apply for and Obtain Permits from the Commissioner of Health

NOTICE IS HEREBY GIVEN that the Department of Health is seeking information or opinions from sources outside the agency in preparing to promulgate a rule governing a new permit and enforcement system for hearing instrument dispensers. The promulgation of this rule is authorized by *Minnesota Statutes*, Section 153A.14, subdivision 5.

All interested or affected persons or groups are invited to submit statements of information in writing or comment orally to:

Susan E. Winkelmann
Consumer Mediator, Hearing Instrument Dispensing
Health Systems Development
Department of Health
P.O. Box 9441
717 Delaware Street S.E.
Minneapolis, Minnesota 55440
Telephone: 612/623-5752

All statement of information and comment shall be accepted until further notice. Any written material received by the Department of Health shall be made part of the rulemaking record.

Department of Human Services

Notice of Surgical Procedures Performed on Inpatients Which Require a Second Opinion

Pursuant to *Minnesota Rules*, part 9505.5035, Subpart 1, this is the list of surgical procedures performed on inpatients for which a second surgical opinion is a condition of Medical Assistance or General Assistance Medical Care reimbursement.

SERVICE NAME	CPT-(1988 Version) Codes
1. Tonsillectomy and/or Adenoidectomy	42820, 42821, 42825, 42826, 42830, 42831, 42835, 42836, 42860, 42870
2. Hysterectomy	58150, 58152, 58180, 58260 58265, 58267, 58270, 58275, 58280, 58285
3. Cholecystectomy	47600, 47605, 47610, 47610 with 47550, 47612, 47620
4. Hernia Repair	49505, 49510, 49515, 49520, 49525, 49540, 49550, 49552, 49555, 49560, 49565, 49570, 49575, 49581, 49590

NOTE: Beginning December 1, 1988, the department will not require a second surgical opinion for hernia repair procedures.

The requirements of the Medical Assistance and General Assistance Medical Care second surgical opinion program are outlined in *Minnesota Rules*, parts 9505.5000 to 9505.5105.

Department of Public Safety

Office of Pipeline Safety

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules of the State Department of Public Safety Governing the Model Pipeline Safety Ordinance

NOTICE IS HEREBY GIVEN that the State Department of Public safety is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing initial comprehensive pipeline inspections.

The promulgation of these rules is authorized by *Minnesota Statutes* section 299J.05, which authorizes the agency to develop a model pipeline setback ordinance.

The State Department of Public Safety requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

William C. Barbeau, Director
Office of Pipeline Safety
289 E. 5th Street
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-9638 and in person at the above address.

Any written material received by the State Department of Public Safety shall become part of the rulemaking record in the event that the rules are promulgated.

Department of Trade and Economic Development

Addition to Distressed County List

Wabasha county should be added to the list of distressed counties that appeared in the *State Register* on 15 August 1988, volume 13, pp. 352-353. Wabasha county qualifies because its unemployment rate for the period May 1987 through April 1988 was 5.7 percent (more than 10 percent above the statewide average of 5.0 percent) and 28.0 percent of the county's employment is in agriculture (exceeding the 20 percent requirement).

Wabasha county is therefore declared as meeting the statutory provisions and certified as a distressed county under *Minnesota Statute 297A.257*.

The information used to make these determinations was supplied by the Department of Jobs and Training, the State Demographer's Office, and the State Planning Agency.

Transportation Regulation Board

Opportunity for Hearing on Petition of Regular Route Motor Common Carriers for Authority to Publish a Revised System for Determining Rate Basis of Zip Code Point Identification Applicable to Class Rated Shipments Between Points in Minnesota

Docket No. GR-88-205/T-3000 MIDDLEWEST MOTOR FREIGHT BUREAU, 215 Volker Blvd., P.O. Box 647, Kansas City, MO 64141-0647: Petition of regular route common carriers participating in Tariff MWB 306-G, MTRB 166, for authority to publish a revised system of Zip Code Point Identification for determining the rate basis applicable between all points in Minnesota to be utilized in computing the class rates and charges applicable to class rated shipments moving in intrastate commerce which rates are to be governed by the National Motor Freight classification less-than-truckload (LTL) single rating system and/or exception ratings currently applicable.

The present rate basing system is based on the route miles between the origin and destination points. Unless the origin and destination points are shown in Section 4 of the tariff, together with specific point-to-point mileage, determination of the proper rate basis requires reference to Section 5 which involves a tortuous method of determining route mileage. The proposed system eliminates this complicated method, but establishes the same route miles as a rate basis between all major points together with a simplified method of determining the appropriate rate basis between all other points. To further simplify this process, zip codes are used as point identifiers.

The proposed revisions are patterned after those applicable in connection with petitioners' interstate rates and charges. The impetus for the proposed revisions stems from the broad acceptance nationwide from both shippers and carriers alike, for this type of tariff. The end result will be a much simplified tariff which is easily capable of computerization by all tariff users with a rate scale which is virtually identical to the present rates, but which must currently be determined under a complicated process.

Any person may file an original and five (5) copies of a written comment or objection to the action sought herein by means of a letter addressed to the Transportation Regulation Board, 254 Administrative Truck Center, 100 Stockyards Rd., South St. Paul, MN 55075, no later than November 28, 1988. An objection should state specifically how the objector's interest will be affected by the proposed action. A copy of the objection must be served on the applicant's attorney, G. D. Michalson, 215 Volker Blvd., P.O. Box 647, Kansas City, MO 64141-0647. A copy of the fifty-six (56) page petition may be obtained upon written request from the Board Office with the remission of fourteen (14) dollars.

State Contracts and Advertised Bids

Pursuant to the provisions of Minn. Stat. § 14.10, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$15,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Department of Administration: Materials Management Division

Contracts and Requisitions Open for Bid

Call 296-2600 for information on a specific bid, or to request a specific bid.

Commodity: Telephone system-message relay system
Contact: Joseph Gibbs 612-296-3750
Bid due date at 2pm: November 2
Agency: Public Service
Deliver to: St. Paul
Requisition #: 99908 00038

Commodity: Narco physiotape cassette
Contact: Joseph Gibbs 612-296-3750
Bid due date at 2pm: November 2
Agency: State University
Deliver to: Mankato
Requisition #: 26071 18369

Commodity: T/C chromatograph
Contact: Joseph Gibbs 612-296-3750
Bid due date at 2pm: November 3
Agency: State University
Deliver to: Winona
Requisition #: 26074 12386

Commodity: New or used asphalt maintainer Lee-Boy ModW1200
Contact: Mary Jo Bruski 612-296-3772
Bid due date at 2pm: November 4
Agency: Transportation
Deliver to: Golden Valley
Requisition #: 79382 01534

Commodity: Apple hardware and software rebid
Contact: Don Olson 612-296-3771
Bid due date at 2pm: November 4
Agency: Various
Deliver to: Various
Requisition #: Price Contract

Commodity: Computer software
Contact: Joan Breisler 612-297-2729
Bid due date at 2pm: November 7
Agency: Jobs and Training
Deliver to: St. Paul
Requisition #: 21200 19655

Commodity: 1981 or newer single engine aircraft—State Patrol
Contact: Mary Jo Bruski 612-296-377
Bid due date at 2pm: November 7
Agency: Public Safety, State Patrol
Deliver to: St. Paul
Requisition #: 07500 51678

Commodity: 800-service, operator service, International DDD
Contact: Don Olson 612-296-3771
Bid due date at 2pm: November 7
Agency: Various
Deliver to: Various
Requisition #: Price Contract—Addendum #1

Commodity: Conference table and chairs
Contact: Linda Parkos 612-296-3725
Bid due date at 2pm: November 8
Agency: Human Services Department
Deliver to: St. Paul
Requisition #: 55000 95186

Commodity: TDD-ring signalers (re-bid: item 5)
Contact: Don Olson 612-296-3771
Bid due date at 2pm: November 8
Agency: Human Services Department
Deliver to: St. Paul
Requisition #: Price Contract

Commodity: Xerox memorywriter maintenance—(printing and mailing services division rentals only)
Contact: Don Olson 612-296-3771
Bid due date at 2pm: November 8
Agency: Various
Deliver to: Various
Requisition #: Price Contract—Rebid

Commodity: Xerox memorywriter maintenance for agency owned units
Contact: Don Olson 612-296-3771
Bid due date at 2pm: November 8
Agency: Various
Deliver to: Various
Requisition #: Price Contract

Commodity: Complete line of ball and roller bearings
Contact: Dale Meyer 612-296-3773
Bid due date at 2pm: November 8
Agency: Various
Deliver to: Various
Requisition #: Price Contract

Commodity: Portable recorder
Contact: Pam Anderson 612-296-1053
Bid due date at 2pm: November 4
Agency: State University
Deliver to: St. Cloud
Requisition #: 26073 20773

Commodity: Van modification
Contact: Brenda Thielen 612-296-9075
Bid due date at 2pm: November 8
Agency: Jobs & Training Department
Deliver to: Minneapolis
Requisition #: 21603 71271

State Contracts and Advertised Bids

Commodity: Van modification
Contact: Brenda Thielen 612-296-9075
Bid due date at 2pm: November 8
Agency: Jobs & Training Department
Deliver to: Minneapolis
Requisition #: 21607 73137

Commodity: Van conversion for handicapped
Contact: Brenda Thielen 612-296-9075
Bid due date at 2pm: November 8
Agency: Jobs & Training Department
Deliver to: Minneapolis
Requisition #: 21607 73188

Commodity: Lumber/roofing materials/hardware
Contact: Pam Anderson 612-296-1053
Bid due date at 2pm: November 8
Agency: Transportation Department
Deliver to: St. Paul
Requisition #: 79050 21116

Commodity: Sona-graph
Contact: Pam Anderson 612-296-1053
Bid due date at 2pm: November 9
Agency: State University
Deliver to: St. Cloud
Requisition #: 26073 20771

Commodity: Design consultant for Intertech—rebid
Contact: Don Olson 612-296-3771
Bid due date at 2pm: November 7
Agency: Administration Department: Intertech Group
Deliver to: St. Paul
Requisition #: Price Contract

Contract Awards—Materials Management Division

Item: Computer equipment
Req.#: 04121 91691 01
Awarded to: Northgate Computer System, Plymouth, MN
Awarded amount: \$5,498.00
Awarded date: October 19, 1988
Expir/deliv date: November 1, 1988
Shipped to: Minnesota Department of Agriculture

Item: Repair alteration to building and
Req.#: 27000 90029 01
Awarded to: Lakehead Painting and Sign, Grand Rapids, MN
Awarded amount: \$6,663.00
Awarded date: October 19, 1988
Expir/deliv date: November 15, 1988
Shipped to: Brainerd Community College

Item: Lubricating oil and grease
Req.#: 29008 80254 01
Awarded to: Corcoran Supply Company, Grand Rapids, MN
Awarded amount: \$11,218.80
Awarded date: October 19, 1988
Expir/deliv date: November 30, 1988
Shipped to: DNR—Southern Service Center

Item: Printing equipment
Req.#: 78550 06352 01
Awarded to: Printing Maintenance, Brooklyn Center, MN
Awarded amount: \$6,500.00
Awarded date: October 19, 1988
Expir/deliv date: November 21, 1988
Shipped to: Minnesota Correctional Facility

Item: Meat, fresh, frozen, canned, cure
Req.#: 78620 00261 01
Awarded to: Campion Meats and Catering, St. Paul, MN
Awarded amount: \$9,232.80
Awarded date: October 19, 1988
Shipped to: Minnesota Correctional Facility

Item: Meat, fresh, frozen, canned, cure
Req.#: 78620 00261 02
Awarded to: Granite City Meats, Sauk Rapids, MN
Awarded amount: \$5,240.00
Awarded date: October 19, 1988
Shipped to: Minnesota Correctional Facility

Item: Meat, fresh, frozen, canned, cure
Req.#: 78830 09519 01
Awarded to: Campion Meats and Catering, St. Paul, MN
Awarded amount: \$8,306.60
Awarded date: October 19, 1988
Shipped to: Minnesota Correctional Facility

Item: Meat, fresh, frozen, canned, cure
Req.#: 78830 09519 02
Awarded to: Granite City Meats, Sauk Rapids, MN
Awarded amount: \$11,870.00
Awarded date: October 19, 1988
Shipped to: Minnesota Correctional Facility

Item: Sound reproduction equipment
Req.#: 07500 51654 01
Awarded to: Scanner World USA, Albany, NY
Awarded amount: \$7,849.50
Awarded date: October 20, 1988
Expir/deliv date: October 24, 1988
Shipped to: DPS, Warehouse

Item: Doors (furnish and install)
Req.#: 26175 09289 01
Awarded to: Stans Door Service Inc., Blaine, MN
Awarded amount: \$6,349.00
Awarded date: October 20, 1988
Expir/deliv date: October 20, 1988
Shipped to: Southwest State University

Item: Security detection device
Req.#: 79000 92231 01
Awarded to: Photo Security Systems, Minneapolis, MN
Awarded amount: \$5,112.00
Awarded date: October 20, 1988
Expir/deliv date: October 20, 1988
Shipped to: Mn/DOT, Electrical Services

Item: Electronic component parts and accessories
Req.#: 79050 23354 01
Awarded to: Traffic Systems Corporation, Edina, MN
Awarded amount: \$11,900.00
Awarded date: October 20, 1988
Expir/deliv date: November 15, 1988
Shipped to: Mn/DOT, Electrical Services

State Contracts and Advertised Bids

Item: Electronic component parts and accessories
Req.#: 79000 92217 01
Awarded to: Verta Corporation, Eden Prairie, MN
Awarded amount: \$14,800.00
Awarded date: October 20, 1988
Expir/deliv date: November 1, 1988
Shipped to: Mn/DOT, Electrical Services

Item: Electronic component parts and accessories
Req.#: 79050 23352 01
Awarded to: Verta Corporation, Eden Prairie, MN
Awarded amount: \$35,520.00
Awarded date: October 20, 1988
Expir/deliv date: November 2, 1988
Shipped to: Mn/DOT, Electrical Services

Item: Furniture, office
Req.#: 02310 16182 02
Awarded to: Elec. Office Environment
Awarded amount: \$35,952.00
Awarded date: October 21, 1988
Expir/deliv date: November 30, 1988
Shipped to: Various Locations

Item: Laboratory supplies
Req.#: 04661 91766 01
Awarded to: Nelson Analytical Inc., Cupertino, CA
Awarded amount: \$6,275.00
Awarded date: October 21, 1988
Expir/deliv date: December 19, 1988
Shipped to: Minnesota Department of Agriculture

Item: Used station wagon
Req.#: 55510 03323 01
Awarded to: Minnesota State Administration Department, St. Paul, MN
Awarded amount: \$5,200.00
Awarded date: October 21, 1988
Expir/deliv date: October 24, 1988
Shipped to: Ah-Gwah-Ching Nursing Home

Item: Furniture, dorm/ward
Req.#: 55520 04300 01
Awarded to: Office Machine Sales and, St. Paul, MN
Awarded amount: \$23,145.62
Awarded date: October 21, 1988
Expir/deliv date: January 20, 1989
Shipped to: Oak Terrace Nursing Home

Item: Transformer distributor power
Req.#: 67120 10118 01
Awarded to: Jordano Bart and Associates, Hopkins, MN
Awarded amount: \$6,691.50
Awarded date: October 21, 1988
Shipped to: Various Locations

Item: Automobile, medium, compact
Req.#: 79000 01396 01
Awarded to: Minnesota State Administration Department, St. Paul, MN
Awarded amount: \$20,375.00
Awarded date: October 21, 1988
Expir/deliv date: October 24, 1988
Shipped to: Mn/DOT, Central Shop

Item: Steel bars and rods, iron, etc.
Req.#: 79500 03182 01
Awarded to: Paper Calmenson Company, St. Paul, MN
Awarded amount: \$21,855.80
Awarded date: October 21, 1988
Expir/deliv date: October 27, 1988
Shipped to: Minnesota Department of Transportation

Item: Signs, decals
Req.#: 79500 03177 01
Awarded to: A to Z Sales, St. Paul, MN
Awarded amount: \$7,925.00
Awarded date: October 21, 1988
Expir/deliv date: November 22, 1988
Shipped to: Minnesota Department of Transportation

Item: Ashers, low-temperature
Req.#: 12400 27023 01
Awarded to: March Industries Inc., Concord, CA
Awarded amount: \$13,520.00
Awarded date: October 24, 1988
Expir/deliv date: November 28, 1988
Shipped to: Minnesota Department of Health

Item: Copying equipment
Req.#: 26073 20706 01
Awarded to: Xerox Corporation, Edina, MN
Awarded amount: \$15,585.00
Awarded date: October 24, 1988
Expir/deliv date: November 1, 1988
Shipped to: St. Cloud State University

Item: Seals, tags
Req.#: 29000 50948 01
Awarded to: Keyes Davis Company, Battle Creek, MI
Awarded amount: \$7,579.00
Awarded date: October 24, 1988
Expir/deliv date: December 20, 1988
Shipped to: DNR—Bureau of License

Item: Printing equipment
Req.#: 78550 06353 01
Awarded to: Multigraphics, Mendota Heights, MN
Awarded amount: \$8,060.00
Awarded date: October 24, 1988
Expir/deliv date: November 28, 1988
Shipped to: Minnesota Correctional Facility

Item: Surveying equipment
Req.#: 79000 92189 01
Awarded to: Xerox Corporation, Edina, MN
Awarded amount: \$47,100.00
Awarded date: October 24, 1988
Expir/deliv date: November 28, 1988
Shipped to: Minnesota Department of Transportation

Item: Repair alteration to building and
Req.#: 01000 05371 01
Awarded to: Nielsen Sheet Metal, Brooklyn Park, MN
Awarded amount: \$14,091.00
Awarded date: October 25, 1988
Shipped to: Various Locations

Item: Computer equipment
Req.#: 07500 51662 01
Awarded to: Boffin Limited, Burnsville, MN
Awarded amount: \$9,840.00
Awarded date: October 25, 1988
Expir/deliv date: November 20, 1988
Shipped to: Various Locations

Item: Dosimeters
Req.#: 12200 27200 01
Awarded to: Continental Safety
Equipment, Eagan, MN
Awarded amount: \$9,150.00
Awarded date: October 25, 1988
Expir/deliv date: November 8, 1988
Shipped to: Minnesota Department of
Health

Item: Computer equipment
Req.#: 21200 19593 01
Awarded to: Paradyne Corporation,
Minneapolis, MN
Awarded amount: \$8,660.00
Awarded date: October 25, 1988
Expir/deliv date: November 20, 1988
Shipped to: Various Locations

Item: Computer equipment
Req.#: 27152 46582 01
Awarded to: Computers Etc., St. Cloud,
MN
Awarded amount: \$34,160.00
Awarded date: October 25, 1988
Expir/deliv date: November 15, 1988
Shipped to: Anoka-Ramsey Community
College

Item: Laboratory supply
Req.#: 29000 50986 01
Awarded to: Bio Products Inc.,
Warrenton, OR
Awarded amount: \$11,054.00
Awarded date: October 25, 1988
Expir/deliv date: October 30, 1988
Shipped to: Department of Natural
Resources

Item: Computer, personal computers
Req.#: 67330 10187 01
Awarded to: Apple Computer Inc.,
Rolling Meadows, IL
Awarded amount: \$5,907.00
Awarded date: October 25, 1988
Expir/deliv date: November 10, 1988
Shipped to: Department of Revenue

Item: Drafting graphic art equipment
Req.#: 79000 92190 01
Awarded to: Xerox Corporation, Edina,
MN
Awarded amount: \$42,390.00
Awarded date: October 25, 1988
Expir/deliv date: November 28, 1988
Shipped to: Minnesota Department of
Transportation

Department of Administration: Printing & Mailing Services

Printing vendors for the following printing contracts must review contract specifications in printing buyers office at 117 University Avenue, Room 134-B, St. Paul, MN.

Commodity: Inpatient hospital
administration and phy. certificate,
15M 20-part continuous sets,
9½" × 11" includes pinfeed, negs
furnished 1-sided
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: Human Services Department
Deliver to: St. Paul
Requisition #: 2698

Commodity: Clearing account deposit
slip, 1,500 5-part sets, 6" × 14¾"
overall, type to set, 1-sided
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: Jobs and Training Department
Deliver to: St. Paul
Requisition #: 2681

Commodity: Envelopes, 5M Kraft open
end, 6" × 9", type to set, 1-sided
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: Electricity Board
Deliver to: St. Paul
Requisition #: 2424

Commodity: Weighing tickets, 5M pads
of 2-part sets 50 per pad, 3¾" × 6¼"
overall, camera ready, 1-sided,
preprinted numbering
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: Transportation Department
Deliver to: St. Paul
Requisition #: 2303

Commodity: Commerce license, 100M
(3 per sheet) 9½" × 11" overall, type to
set, 1-sided, fanfold 3 up, perforation
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: Commerce Department
Deliver to: St. Paul
Requisition #: 2759

Commodity: Employee bi-weekly time
report, 400 pads, 28 3-part sets per
pad, 9½" × 5" overall, negs furnished.
1-sided
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: Education Department
Deliver to: St. Paul
Requisition #: 2574

Commodity: Job service introduction
card, 25M 2-part sets, type to set, 1-
and 2-sided, 6" × 7¾" overall
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: Jobs and Training Department
Deliver to: St. Paul
Requisition #: 2378

Commodity: Chemistry 1, 10M 3-part
sets, 3¾" × 5" with stub, camera ready,
1-sided, pressure sensitive strip on
back of part 1
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: Human Services Department
Deliver to: St. Paul
Requisition #: 2398

Commodity: Consultation Division
(pressure sensitive labels), 10M on a
roll, 3½" × 1¼", 1-sided
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: Labor and Industry Department
Deliver to: St. Paul
Requisition #: 2263

State Contracts and Advertised Bids

Commodity: Fixed asset property label, die cut-unnumbered, 600 rolls, 100 per roll, 2" x 1", type to set, 1-sided, rounded corners and waste stripped
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: Administration Department: Central Stores
Deliver to: St. Paul
Requisition #: 2138

Commodity: "Start Seeing Motorcycles" poster, 2M 16" x 26", 1-sided, camera ready
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: 2385

Commodity: Request for records, 8M 2-part sets, 6" x 11" sheet, 6" x 4" card, type to set, 1-sided
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: Administration Department: Records Center
Deliver to: St. Paul
Requisition #: 2614

Commodity: Uniform traffic tickets, 50M sets of 5 parts, 2-sides, 4 1/4" x 9 1/4" overall, preprinted numbering, 20 sets per book
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: State Patrol
Deliver to: St. Paul
Requisition #: 2643

Commodity: Gas Tickets, 30M 2-part sets, camera ready, 4 1/8" x 7 3/4" overall
Contact: Printing Buyer's Office
Bids are due: November 2
Agency: Administration Department: Travel Management
Deliver to: St. Paul
Requisition #: 2720

Commodity: AFDC household report envelopes, 300M #9 with window, 3 7/8" x 8 7/8"
Contact: Printing Buyer's Office
Bids are due: November 3
Agency: Human Services Department
Deliver to: New Brighton
Requisition #: 2653

Commodity: Driver's license renewal zip + 4 envelope, 450M with window, 8 1/16" x 4 1/4", 1-sided, camera ready
Contact: Printing Buyer's Office
Bids are due: November 3
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: 2714

Commodity: Field investigation information, 500 2-part sets, 8 1/2" x 6 1/4" overall, type to set, 1-sided
Contact: Printing Buyer's Office
Bids are due: November 3
Agency: Jobs and Training Department
Deliver to: St. Paul
Requisition #: 2635

Commodity: Test for syphilis, 40M 3-part sets, 6" x 8 1/2" overall, negs furnished, 2-sided
Contact: Printing Buyer's Office
Bids are due: November 3
Agency: Minnesota Department of Health
Deliver to: Minneapolis
Requisition #: 2709

Commodity: Consolidated sales tax return, 40M 2-part forms, continuous, 8 1/2" x 11" includes pinfeed, type to set, 2-sided, fan fold 1 up
Contact: Printing Buyer's Office
Bids are due: November 3
Agency: Revenue Department
Deliver to: St. Paul
Requisition #: 2727

Commodity: Records container label, 1,250 3-part sets, camera ready, 1-sided, 6" x 4 3/4" overall
Contact: Printing Buyer's Office
Bids are due: November 3
Agency: Minnesota Department of Health
Deliver to: Minneapolis
Requisition #: 2708

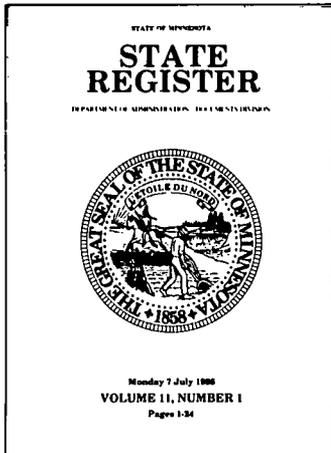
Commodity: Medication record, 25M 8 1/2" x 11", negs furnished, 2-sided
Contact: Printing Buyer's Office
Bids are due: November 3
Agency: Human Services Department
Deliver to: St. Paul
Requisition #: 2617

Commodity: Non-credit continuing education registration form, 75M 3-part sets, 5" x 8", 1-sided
Contact: Printing Buyer's Office
Bids are due: November 3
Agency: Minnesota Community College System
Deliver to: St. Paul
Requisition #: 2738

Commodity: 1989 Minnesota fishing regulations, 1,250M books 32 pp, 3 1/2" x 7", 4-color, type to set, saddle stitch
Contact: Printing Buyer's Office
Bid due date at 2pm: November 11
Agency: Department of Natural Resources
Deliver to: St. Paul
Requisition #: 2251

Commodity: Unit service record, 1M books, 60 sets of 3-parts per book, 4 1/4" x 7" sheet size, 1-sided, negs furnished, wire staple cloth tape binding
Contact: Printing buyer's office
Bids are due: November 4
Agency: Transportation Department
Deliver to: St. Paul
Requisition #: 2797

Commodity: "Drinking Drivers Lose" brochure, 800M sheets 8" x 14" 3 folds to 3 1/2" x 8", 2-sided, camera ready + negs furnished
Contact: Printing buyer's office
Bid due date at 2pm: November 8
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: 2837



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Contract Awards—Printing & Mailing Services

Item: 1989 resident combination angling license
Req. #: 2061
Awarded to: Moore Business Forms, Bloomington
Amount: \$16,856.25
Date: October 20
Deliver to: DNR License Bureau, St. Paul
Delivery date: As Requested

Item: Arts board news
Req. #: 2199
Awarded to: Printing Resources, Shoreview
Amount: \$4,796.00
Date: October 20
Deliver to: Arts Board, St. Paul
Delivery date: As Requested

Item: MA/GAMC provider manual update
Req. #: 2264
Awarded to: Viking Press, Eden Prairie
Amount: \$7,973.00
Date: October 20
Deliver to: Human Services Department, St. Paul
Delivery date: 30 days

Item: Fish and wildlife division report
Req. #: 2315
Awarded to: Twin City Litho, Roseville
Amount: \$6,439.00
Date: October 20
Deliver to: DNR, St. Paul
Delivery date: 10 days

Item: Dealers and manufacturers snowmobile decals
Req. #: 2333
Awarded to: Applied Power Products, St. Paul
Amount: \$1,085.00
Date: October 20
Deliver to: DNR, St. Paul
Delivery date: 28 days

Item: Sheriffs boar inspection stickers
Req. #: 2334
Awarded to: Lakeland Graphics, Inc., Brooklyn Center
Amount: \$1,447.60
Date: October 20
Deliver to: DNR, St. Paul
Delivery date: 21 days

Item: Refund RTC's and state nursing homes
Req. #: 2351
Awarded to: Georgene Bergstrom Company, Minneapolis
Amount: \$293.72
Date: October 20
Deliver to: Human Services Department, St. Paul
Delivery date: 30 days

Item: Explore Minnesota downhill skiing brochure
Req. #: 2356
Awarded to: Miller Printing, St. Paul
Amount: \$2,090.00
Date: October 25
Deliver to: Tourism Office, St. Paul
Delivery date: 7-10 days

Item: Envelopes for department of education
Req. #: 1937
Awarded to: Quality Park Products, St. Paul
Amount: \$857.10
Date: October 24
Deliver to: Education Department, St. Paul
Delivery date: 5 weeks

State Contracts and Advertised Bids

Item: TB culture window envelopes
Req.#: 2028
Awarded to: MacKay Envelope,
Minneapolis
Amount: \$976.50
Date: October 20
Deliver to: Minnesota Department of
Health, Minneapolis
Delivery date: 15-20 working days

Item: InterOffice envelopes—small
Req.#: 2087
Awarded to: Quality Park Products, St.
Paul
Amount: \$3,367.50
Date: October 24
Deliver to: Administration Department:
Central Stores, St. Paul
Delivery date: 5 weeks

Item: Records container label
Req.#: 2140
Awarded to: Pauly Business Forms,
Plymouth
Amount: \$678.75
Date: October 24
Deliver to: Administration Department:
Central Stores, St. Paul
Delivery date: 28 days

Item: Department field purchase order
form
Req.#: 2141
Awarded to: Custom Business Forms,
Minneapolis
Amount: \$2,919.00
Date: October 24
Deliver to: Administration Department:
Central Stores, St. Paul
Delivery date: 12 days

Item: Benefit account deposit slips
Req.#: 2206
Awarded to: Royal Business Forms,
Brooklyn Center
Amount: \$298.32
Date: October 24
Deliver to: Jobs and Training
Department, St. Paul
Delivery date: 30 days

Item: Temporary driver license
Req.#: 2256
Awarded to: Printing Resources,
Shoreview
Amount: \$1,089.00
Date: October 24
Deliver to: Public Safety Department,
St. Paul
Delivery date: As Requested

Item: Central stores requisition
Req.#: 2370
Awarded to: Royal Business Forms,
Brooklyn Center
Amount: \$371.61
Date: October 24
Deliver to: Minnesota Department of
Health, Minneapolis
Delivery date: 30 days

Item: Charge statement
Req.#: 2382
Awarded to: Bann Division Stuart
Hooper, St. Paul
Amount: \$187.50
Date: October 24
Deliver to: Public Safety Department,
St. Paul
Delivery date: As Requested

Item: "Out of Sight" pamphlet
Req.#: 2403
Awarded to: Twin City Litho, Roseville
Amount: \$570.00
Date: October 20
Deliver to: Minnesota Department of
Health, Minneapolis
Delivery date: 10 days

Item: Laboratory report form
Req.#: 2507
Awarded to: Georgene Bergstrom
Company, Minneapolis
Amount: \$3,569.00
Date: October 24
Deliver to: Minnesota Department of
Health, Minneapolis
Delivery date: 45 days

Item: "Getting Smashed" brochure
Req.#: 2513
Awarded to: Printing Resources,
Shoreview
Amount: \$2,390.00
Date: October 25
Deliver to: Public Safety, St. Paul
Delivery date: As Requested

Department of Administration

Office Space Wanted for Department of Jobs and Training

The Dept. of Administration desires proposals for rental of approximately 14,000 usable sq. ft. of office space and approximately 350 usable sq. ft. of storage space for the Dept. of Jobs and Training in Mankato. For copy of Request for Lease Proposal, contact the Dept. of Administration, Real Estate Management Division, 50 Sherburne Ave., Rm. G22, St. Paul, MN 55155 (612) 296-6674. Proposals must be submitted by 4:30 p.m. (CST) on Wednesday, December 28, 1988.

Minnesota Community College System

Request for Proposals for Actuarial Consulting Assistance

The Minnesota Community College System is seeking actuarial consulting assistance in implementing a "defined contribution" retirement plan for newly hired unclassified employees authorized by the 1988 Legislature.

Assistance is needed in three areas:

1. Assistance in bid specification preparation
2. Actuarial evaluation of vendors' responses
3. Qualifying the plan with the IRS under 401(a).

Phase one is estimated to require four (4) hours of consulting assistance to take place in December 1988. It is intended that the "defined contribution" retirement plan be operational in late April, 1989.

Firms interested are requested to submit their proposals not later than 4:30 p.m., Friday, November 21, 1988 to:

Dr. Carl Gerber, Vice Chancellor
Minnesota Community College System
Room 201, Capitol Square Building
St. Paul, Minnesota 55101

Each proposal should contain the following:

1. Evidence of competence to act as a consultant in the "defined contribution" retirement field.
2. Persons to be assigned and their qualifications.
3. Your approach to fulfilling our requirements.
4. The cost of the services to be provided.

Department of Health

Request for Proposal To Provide Services of a Special Examiner, Deputy Rehabilitator, Deputy Liquidator or Attorney for Rehabilitation/Liquidation

The work under a contract under this proposal is authorized under *Laws of Minnesota (1988)* Chapter 612, Section 34. The Commissioner of Health intends to contract with a number of qualified individuals or groups who will be asked to provide services on call if a health maintenance organization is at risk of not satisfying its financial obligations to enrollees or creditors.

The Request for Proposal is not an offer to contract with any person. If an entity is selected as a contractor, there is no obligation for the Commissioner of Health to necessarily use the services of the entity within a given period of time. The State reserves the right to cancel the solicitation if it is considered to be in the State's best interest.

I. Scope of Project

Since 1973, the Commissioner of Health has been charged by Minnesota laws with the responsibility for conducting examinations of the financial and other affairs of health maintenance organizations. The Commissioner of Health retains a staff of professional auditors to conduct routine and special audits of HMO financial conditions. However, when conditions arise which threaten the continued ability of an HMO to satisfy its financial obligations, then contractual services of auditors, actuaries and other financial managers are needed to assist in special examinations. Prior to rehabilitation or liquidation, a special examiner is charged with specific monitoring responsibilities. Written and verbal reports are presented to the Commissioner and designees.

In 1988, the Minnesota Legislature added to the Commissioner's authority, the rehabilitation and liquidation of health maintenance organizations. See *Laws of Minnesota (1988)* Chapter 612, Section 23. Rehabilitation or liquidation shall be conducted under the supervision of the Commissioner under the procedures in *Minnesota Statute* Chapter 60B as they relate to insurance, except to the extent that the nature of an HMO renders the procedures clearly inappropriate and as provided by specific provisions in Chapter 62D, Section 18 for HMO rehabilitation or liquidation.

II. Purpose

A special examiner assists the Commissioner of Health in monitoring the financial condition of an HMO which is at risk of insolvency. The examiner provides reports to the Commissioner to prevent the surprise failure of an HMO and to assist the financial recovery of the HMO under examination.

A deputy rehabilitator protects the interests of enrollees, creditors and the public generally through early detection of any potentially dangerous condition in an HMO, and prompt application of appropriate corrective measures which will improve the viability of the corporation. A deputy rehabilitator also secures the assets of the HMO and determines the accurate liabilities so that the Commissioner of Health can determine whether the HMO should remain in rehabilitation, return to control by the corporation or place the HMO into liquidation. If the HMO is to be liquidated, the deputy rehabilitator coordinates the opportunity for HMO enrollees to become enrollees or subscribers of another HMO, an insurer, a health service plan, or a similar health plan.

State Contracts and Advertised Bids

A deputy liquidator coordinates the dissolution of the corporate existence of the HMO. The deputy liquidator shall maximize the assets of the HMO and assert defenses against liabilities so that enrollees and creditors have equitable apportionment of any unavoidable loss. All creditors shall be paid in the manner prescribed by law after the amount of available net assets are known.

An attorney for the rehabilitator/liquidator represents the Commissioner of Health in rehabilitation or liquidation matters, with coordination through the Health Law Division, Office of the Attorney General. The attorney prepares court documents, prosecutes necessary actions, defends the Commissioner in relevant cases and provides needed advice.

III. Professional Tasks

There are four categories of special tasks that can be identified in the proposal: special examiner, special deputy for rehabilitation, special deputy for liquidation, and attorney for rehabilitation/liquidation.

A. Special Examiner

Professional tasks to be performed are listed below. Each of the tasks require different areas of expertise; therefore, examiners will be retained for specific portions of the potential tasks. For example, auditors with experience in evaluation of accounting systems and financial statements may be retained for that purpose only and separate contracts may be written with other special examiners such as, actuaries, financial managers, provider utilization and contract specialists or risk management specialists. The special examiner shall serve at the pleasure of the Commissioner.

Activities to be performed by one or more special examiner are:

1. Review of HMO's risk exposure including contract mix and family size, demographics, coverage levels, business segments and growth patterns in membership.
2. Evaluation of management information systems including utilization monitoring systems and reports, claims processing and projection of incurred but not reported claims, financial and administrative functions, planning and budgeting systems and enrollment/marketing functions.
3. Review of operating expense areas including provider reimbursement payments (capitation, salary or discounted fee-for-service), claim cost trends, claim reserves, other medical care costs, risk-sharing provisions, stop-loss or other large claim monitoring and total assessment of the credibility of experience.
4. Monitoring of provider contract experience and review of proposed amendments for capitation, physician fees, inpatient hospital payments, other services, risk provisions in any such contract, utilization review activities, quality assurance provisions and termination provisions.
5. Review of administrative expenses in HMO operated management and contractual management approaches. The examiner shall recommend changes to reduce administrative costs and encourage incentives for efficient overall health plan operations.
6. Review minutes of all appropriate board and committee meetings and pending actions to assure that the board is aware of accurate facts and that board actions and management policies are consistent with identified problem areas.
7. Review all budget documents including detailed narratives with emphasis on detection of unsubstantiated assumptions or projections inconsistent with previous experience.
8. Review rate setting methodology, rating factors and assumptions, distribution of rates among community and experience rates, procedures and documentation, monitoring systems and reports and underwriting practices.
9. General assessment of problems in benefits, unit costs, utilization volume, provider incentives, rating practices or rate levels, revenue yield, underwriting practices, adverse selection, data and reporting, reserves and financial statement liabilities.
10. Review the results of above activities with the Department of Health including periodic written reports and special reports on serious problems.

B. Special Deputy for Rehabilitation

Pursuant to *Minnesota Statutes*, Chapter 60B.17 and *Laws of Minnesota (1988)* Chapter 612, Section 23, the Commissioner of Health shall make every reasonable effort to retain an active or retired senior executive from a successful health maintenance organization to serve as special deputy to rehabilitate the HMO. The special deputy shall have all the powers of the rehabilitator under the law under the direction and control of the Commissioner of Health. The special deputy shall serve at the pleasure of the Commissioner.

Subject to court approval and under the general direction of the Commissioner, the special deputy shall have broad authority to reform and revitalize the HMO. All the powers of the officers and managers, except as they are defined by the Commissioner, shall be assigned to the Special Deputy. These powers include responsibility to direct and manage, to hire and discharge employees subject to any contract rights they may have and to deal with the property and business of the HMO.

The general activities to be performed by the Special Deputy are:

1. Secure the assets of the HMO by taking inventory of all assets present in financial statements, obtaining necessary signature authority and taking possession of all marketable securities and other investments.
2. Assume control of employees and determine employees required, payroll commitments and termination provisions. If the HMO is operated under a management agreement, determine the nature and extent of arrangements to continue portions of the management agreement and conversion of certain portions of management to other sources.
3. Obtain most recent back-up of computer operation and systems development.
4. Review lease obligations and make arrangements to minimize HMO expenses for leases or similar obligations.
5. Review all areas of HMO operations listed as activities of the special examiner above. Clarify continuation of appropriate methods of operations and determine if what modifications in policies, procedures, for agreements are needed to correct financial or other operational problems.
6. Review enrollee protection methods and recommend needed amendments.
7. Obtain the support of the participating providers and strength provider relations function as necessary. Negotiate amendments to contracts with providers if needed.
8. Obtain the support of group employee benefit administrators and representatives of purchasers of blocks of enrollment such as Medicare. Strengthen the customer service operations as necessary.
9. Issue needs news releases with approval of MDH to implement public relations efforts to provide needed comfort to enrollees. Respond to public questions about the status of the HMO.
10. Report to the Commissioner of Health as needed, so the Commissioner may provide general direction and control.
11. After review of operations, secure assets and maintain continuation of HMO operations, prepare a plan for reorganization, consolidation, conversion, merger or other modification of the HMO. This includes arrangements for assignment of enrollees to other health plans if it is determined that the HMO cannot be otherwise rehabilitated.
12. If the special deputy rehabilitator believes that further attempts to rehabilitate the HMO would substantially increase the risk of loss of creditors, enrollees and the public in general or would be futile, submit recommendation for liquidation to the Commissioner of Health.
13. If it is determined that the rehabilitation has been accomplished and that grounds for rehabilitation no longer exist, the recommendation shall be made for restoration of possession of its property and control of the HMO to the board of directors.

C. Special Deputy for Liquidation

The Commissioner of Health may, pursuant to *Minnesota Statutes Chapter 60B.25* and *Laws of Minnesota (1988) Chapter 612, Section 23*, appoint a special deputy for liquidation who may have all powers of the liquidator granted by law. The special deputy shall serve at the pleasure of the Commissioner.

The Commissioner may retain more than one person as special deputy assigning specific tasks to each person. Following are the general activities to be performed:

1. Collect all debts and moneys due and claims belonging to the HMO.
2. Conduct public and private sales of the property of the HMO.
3. With the advice and assistance for the attorney for the liquidator and the Office of the Attorney General, hold hearings, subpoena witnesses and prosecute any action which may exist in behalf of the creditors and enrollees.
4. Provide required notice to creditors and others who may be expected to have claims against the HMO.
5. Prepare a list of assets and reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.
6. Review and investigate all claims duly filed. Prepare a report of claims and recommendation on the appropriate use of assets.

D. Attorney for Rehabilitator/Liquidator

The Commissioner of Health may appoint an attorney to provide advice and to represent the Department in legal proceedings. The attorney shall serve at the pleasure of the Commissioner. Following are the general activities to be performed:

1. Review all provider and other operating contracts and provide advice on terms and conditions which may require changes in order to permit the HMO to continue to meet the obligations to enrollees.
2. Prepare petition and order for rehabilitation.

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3. Represent the Commissioner in obtaining Court's consent to the Petition and Order for Rehabilitation.
4. Assist special deputy for rehabilitation to secure the assets of the HMO.
5. Serve copy of Order of Rehabilitation on leaseholders, providers and other affected parties.
6. Send out proofs of claims to all persons and groups on vendor lists.
7. Assist special deputy for rehabilitation in prohibiting providers from seeking recovery of covered HMO expenses for enrollees and from requiring enrollees from signing agreements to be held liable for projected health care expenses.
8. If it is determined that liquidation is necessary, prepare order to liquidate.
9. Prepare documents necessary for the Commissioner to hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath and compel any person to subscribe to testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records, or other documents which the liquidator deems relevant to the inquiry.
10. Assist in collection of all debts and moneys due and claims belonging to the HMO.
11. Advise special deputy for liquidation on conducting public and private sales of the property of the HMO.
12. Prepare notice to creditors and others who may be expected to have claims against the HMO.
13. Advise the Commissioner in contracts as necessary to carry out the order to liquidate.
14. Prosecute and institute any suits and other legal proceedings and abandon the prosecution of claims the liquidator deems unprofitable to pursue. If the HMO is dissolved, apply to the court for leave to be substituted for the HMO as plaintiff.
15. File any necessary documents for record in the office of the county recorder or appropriate other office.
16. Assist the special deputy for liquidation in preparation of the reports of claims and recommendations on the appropriate use of the assets.
17. Report to the Commissioner as needed to keep the Commissioner informed of the progress of liquidation.

IV. Department Contacts

Kent E. Peterson
Director, Alternative Delivery Systems
(612) 623-5454
or
Jerry Jarosch
Supervisor, Examinations Unit
(612) 623-5708

Please note: Other Department personnel are not allowed to discuss the project with responders before the submittal of proposal deadline.

V. Submission of Proposals

All proposals must be sent to and received by

Kent E. Peterson, Director
Alternative Delivery Systems Section
Minnesota Department of Health
717 Delaware Street S.E.
Minneapolis, Minnesota 55440
(612) 623-5454

Not later than 4:00 p.m., November 30, 1988.

Late proposals will not be accepted. Submit 2 copies of proposal. Each copy of the proposal must be signed, in ink, by an authorized member of the firm. Prices and terms of the proposal as stated must be valid for the length of the project.

VI. Project Costs and Duration

The cost of a project shall be determined at the time that a contractor is retained for a specific engagement. The cost of each engagement will be determined by the following considerations:

1. Volume of material to review;
2. Complexity of tasks, or services, required;

3. Estimated length of time to complete the project;
4. Skills of individuals involved;
5. Relative market value of the services provided.

The proposal should cite a history of the firm's experience with special examinations of HMO's, and/or, of liquidation or rehabilitation of HMO's.

The proposal should also cite the hourly billing ranges for each of the types of services offered (i.e. legal, actuarial, accounting and/or auditing, and financial management).

An hourly billing range for each service specified in the proposal will be determined during contract negotiations. The range of rates will be based upon the type of service; skill level and experience of individuals that are likely to be assigned to the project; nature and extent of the contractors corporate support; and the general market value of the services sought.

Contracts will be written with approximately 5 persons or groups in each category of special services.

Once the services of a contractor are needed the contract will be modified specifying the exact hourly billing rate for the personnel actually providing service. Consultants will be paid according to the hourly billing rate specified in the modified contract.

Contractors will only be engaged to perform tasks if the Commissioner determines that a special examination is needed or rehabilitation or liquidation is initiated.

Funds for rehabilitation/liquidation will be paid from health plan assets through court orders. Special examination funds will come from the revolving fund authorized by *Laws of Minnesota* Chapter 612, Section 23.

Contracts will be for one year with two renewal options of one year each. A request for proposal will be made for special services periodically, but no less than every three years.

VII. Proposal Contents

The following will be considered minimum contents of the proposal:

1. A restatement of the objectives, goals and tasks to show or demonstrate the responder's view of one or more portion of the four functions in this request for proposal.
2. Identify, describe and provide at least one example of methods used to provide the tasks proposed.
3. Outline the responder's background and experience with particular emphasis on HMO rehabilitation and liquidation work. Identify specific personnel that could conduct the project, detailing their training and work experience. No change in personnel assigned to the project will be permitted without the approval of the State Project Director/Manager.
4. Responder will prepare a detailed cost and work plan which will identify the major tasks to be accomplished and be used as a scheduling and managing tool as well as the basis for invoicing. Hourly rates and expenses for each staff person shall be proposed. This will be adjusted for the nature and scope of the problems in a particular engagement.
5. Identify the level of the Health Department's participation in the project as well as any other services to be provided by the Department.
6. Identify any potential conflicts of interest such as work for other Minnesota HMOs or health plans, competing with Minnesota HMOs. Describe how the conflict would be handled.
7. Describe the method and time for providing immediate staff in case of less than 48 hour notice by the Commissioner of an engagement for rehabilitation or liquidation.

VIII. Evaluation

All proposals received by the deadline will be evaluated by representatives of the Department of Health. In some instances, an interview will be part of the evaluation process. Factors upon which proposals will be judged include, but are not limited to, the following:

1. Expressed understanding of project objectives.
2. Project work plan.
3. Project cost detail.
4. Qualifications of both company and personnel. Experience of project personnel will be given greater weight than that of the firm.

Evaluation and selections will be completed by December 30, 1988. Results will be sent immediately by mail to all responders. Approximately five responders will be selected for each of the four functions. Selection of some responders will be made for specialty

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tasks and other responders will be selected for general management of rehabilitation or liquidation. Contracts will be completed with all selected responders but engagements will only be entered into after a need arises. Contractors should expect to respond with as little as 48 hours notice for rehabilitation or liquidation conditions. For special examination functions, contractor response within one week will be satisfactory.

Department of Human Services

Notice of Request for Proposal for Alternative Care Grant Assisted Living Pilot Projects

The Minnesota Department of Human Services, Long-Term Care Management Division is soliciting proposals for pilot projects from county boards through the county agency administratively responsible for the Alternative Care Grants (ACG) Program.

Pilot projects must demonstrate the following:

1. the cost effectiveness of alternatives to nursing home care by providing coordinated ACG services for all ACG eligible residents in an identified building;
2. a living situation enabling low-income, frail elderly to live as independently as possible;
3. cost effectiveness that results in a reduction of the monthly per person cost of ACG services;
4. facilitation of the discharge of elderly nursing home residents to less restrictive living situations or delay of their entry into a nursing home.

County agencies must demonstrate to the Department of Human Services (DHS) that quality assurance and auditing systems have been established for each project a county recommends to DHS for grant approval.

Persons eligible to receive ACG pilot project services through an approved grantee are those who:

1. are receiving Medical Assistance or are 180-day eligible;
2. reside in a nursing home or would require nursing home care if community services were not available;
3. have been screened by the county for eligibility and appropriateness of service;
4. are age 65 and older or otherwise eligible for ACG services;
5. are able to direct her or his own care;
6. sign an agreement to waive freedom of choice of vendor for ACG service and to participate in the pilot project;
7. meet the entry criteria set up by an approved pilot project.

County agencies may recommend pilot projects to the state. The state will review recommended projects and may approve up to four pilot projects, including at least one from a metropolitan county and at least one from greater Minnesota. A pilot project may serve up to, but not more than, 40 ACG clients at one time. County agencies must fund any projects approved by the state out of their allocation of 180-day eligible state funds.

Summary of Additional Requirements

1. ACG pilot project services will be provided by a single Medicaid certified home care agency. Other persons living at the housing site who are not enrolled in the pilot project will continue to have freedom of choice of vendor.
2. The housing site must meet state requirements regarding accessibility, may not be a licensed nursing home, boarding home, or hospital, or in a building physically connected to a building that contains hospital, boarding home, or nursing home beds.
3. The housing site must provide each resident with a self-contained unit with a full service kitchen, full bathroom, and adequate sleeping and living space.
4. The housing site and the home care agency may not own, operate, manage, have a controlling interest in, or be related to each other by employment status.
5. The proposal must create a program whose housing and service environment, atmosphere, administration, service delivery, quality assurance, and resident safeguards are noninstitutional. That is, regimentation of residents' lives is minimized and residents are empowered and encouraged to take and retain maximum charge of their lives and decision making.

County Action Requested

1. In response to the state RFP the county agency administratively responsible for the ACG program is requested to issue a request for proposals (RFP) to Medicaid certified home care agencies, appropriate housing sites, and other appropriate organizations.

2. A Medicaid certified home care agency and an appropriate housing site must decide to work together to jointly develop and manage a pilot project. These two parties must negotiate with the county the development of a proposal that meets the state and county RFP specifications.

3. The housing site and home care agency must be willing to contract with the county agency to carry out the proposed pilot project. *No housing site or home care agency may apply directly to the state.*

4. The county agency with the formal approval of the county board may select one or more proposals to recommend to the state. After selection by the county, a copy of the recommended proposal must be forwarded to the state for review.

5. Approval of a project by the state will be contingent upon the county agency signing a contract with the state.

The formal request for proposal which contains specifications and application forms may be requested from the state. Proposals must be delivered to the state office in sealed packages. Five copies are required. Counties must recommend and submit proposals to the state by March 15, 1989. The state will select grantees by April 16, 1989. The anticipated start-up date for the assisted living pilot projects is July 1, 1989. Please direct inquiries to Wally Goettl at:

Home and Community Care Section
Long-Term Care Management Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3844
Telephone: (612) 297-2243 OR (612) 297-4669

State Board of Investment

Request for Proposal for Dedicated Bond Portfolio Adviser Services

That State Board of Investment (SBI) wishes to retain a contractor for the purpose of providing dedicated bond portfolio adviser services for public employee pension and retirement assets. The adviser will assist the SBI by providing liability stream analysis, portfolio cash flow analysis and methodology review of dedication strategies. Services will begin February 1989.

For a detailed request for proposal contact:

Roger W. Henry
Manager, Fixed Income Program
Minnesota State Board of Investment
Room 105—MEA Building
55 Sherburne Avenue
St. Paul, Minnesota 55155

Proposals must be received no later than 3:00 p.m., CST, November 3, 1988.

Department of Public Service—Energy Division

Notice of Request for Proposals for Contractual Services

The Minnesota Department of Public Service, Energy Division (DPS/Energy) is requesting proposals from firms interested in analyzing results of six environmental emission tests performed since September 1986 on Refuse Derived Fuel and Solid Waste from Minnesota. The products will be interim and final reports describing the results.

Objective:

The objective of this work is to determine how garbage processing methods, combustion methods, and pollution control equipment affect stack emissions of acid gases, metals, and particulates.

Project Start and Completion Dates:

This project will begin no later than December 27, 1988. The final report will be due May 31, 1989.

Project Costs:

The maximum available funding for this contract is \$9000.

State Contracts and Advertised Bids

Copies of the Request for Proposal are available from:

Paul Helgeson
Department of Public Service/Energy
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone Number 612/297-3067

All proposals must be submitted to DPS/Energy no later than 3:30 p.m., Monday, November 28, 1988.

Department of Trade and Economic Development

Minnesota Agricultural and Economic Development Board

Notice of Request for Proposals to Establish a Program to Purchase Economic Development Loans from Minnesota Government and Nonprofit Development Entities

The Minnesota Agricultural and Economic Development Board (the "Board") requests proposals for the establishment of a program to purchase economic development loans from Minnesota cities, counties, townships, Indian Reservations, non-profit local development agencies and the State of Minnesota. The Board seeks proposals in an amount not to exceed \$500,000 from any for-profit or not-for-profit organizations which are engaged, or are planning to be engaged, in the purchase, packaging, issuance, or sale of loans, securities, or other obligations that are secured by loans made for local economic development purposes. The money authorized by this proposal must be used to establish a credit reserve to support the purchase of qualifying loans.

Each proposal should include the following:

1. The organization's plan for carrying out the intent of the program including the timetable for the plan, other organizations involved, and legal problems that may have to be overcome.
2. A financing plan which identifies a timetable, sources of additional funding and the names of the organization's investment bankers, financial advisors and bond counsel.
3. Ways by which the organization intends to leverage the Board's funds by at least a ratio of five to one.
4. A definition which the organization intends to use for "business development loans."
5. Methods by which the organization intends to insure that its proceeds from the loan purchases will be used to make additional loans for economic development purposes.
6. Financial statements for the organization covering the past five years.
7. The name and telephone number of the organization's contact person.

In the selection of organizations to receive the grant, the Minnesota Agriculture and Economic Development Board will consider the following criteria:

1. Qualifications of the responders to provide the program.
2. The quality of the responders' plans for carrying out the program.

No proposal shall be considered by the Board without certification of the following by the responder:

1. Loans secured by board funds will be exclusively loans held by Minnesota cities, counties, townships, Indian Reservations, not-for-profit Economic Development Corporations and the State of Minnesota.
2. The Minnesota Agricultural and Economic Development Board shall retain the right to review or reject all loans secured by board funds proposed for purchase. The Board will require evidence of the proposed loan discount rates, proposed use of funds by the sellers of the loans and complete evidence of the responders' ability to service debt acquired by the successful responders. Proceeds from all loans sold to the responders shall be used for economic development purposes.
3. No funds from the Board shall be transferred until evidence is provided regarding the security of funds and the qualification of trustees, bond counsel, and the investment banker. The Board will review the above on the basis of security of state funds and the ability of the successful entity to accomplish the issuance and placement of debt obligations with proceeds committed to acquire development loans in the secondary market. The Board will not release funds for the credit reserve until the time of bond

closing. Should the responder be unable to issue bonds by June 30, 1989, all commitments regarding Board action shall be null and void. The responder will after that date waive all claims to Agricultural and Economic Development Board funding.

4. The Minnesota Agricultural and Economic Development Board will accept proposals through November 10, 1988. The Board anticipates reviewing the proposals and potential Board action in November, 1988.

This request for proposals in no way binds or commits the Minnesota Agricultural and Economic Development Board to commit funds for this purpose.

In accordance with *1988 Minnesota Laws*, Ch. 660, Sec. 8, all responses to RFPs estimated to be in excess of \$50,000 with any person having more than 20 full-time employees in Minnesota at any time during the previous 12 months must have an Affirmative Action Plan approved by the Commissioner of Human Rights before their proposal may be accepted.

No proposal will be accepted unless it includes one of the following:

- a. A copy of your firm's current Certificate of Compliance issued by the Commissioner of Human Rights, or
- b. A signed, notarized statement certifying that your firm is not required to have a Certificate of Compliance because it has not had more than 20 full-time employees in Minnesota at any time during the previous 12 months.

To obtain a Certificate of Compliance, a person must either develop an Affirmative Action Plan acceptable to the Commissioner of Human Rights or offer proof to the Commissioner of approval of an Affirmative Action Plan by a local human rights agency or the federal government by providing copies of the approved plan and documentation of the compliance status. You may contact the Minnesota Department of Human Rights for detailed instruction and assistance in obtaining your Certificate of Compliance at 612/296-5663 or by mail or in person at:

Contract Compliance Unit
Minnesota Department of Human Rights
500 Bremer Tower
7th Place & Minnesota Street
St. Paul, Minnesota 55101

Proposals should be addressed to:

David L. Mocol
Executive Director
MN Agricultural and Economic Development Board
MN Department of Trade and Economic Development
150 East Kellogg Boulevard
St. Paul, MN 55101

Department of Trade and Economic Development

Minnesota Council for Quality

Request for Qualifications to Assist in Establishing Community Quality Councils

The Minnesota Council for Quality is seeking qualified consultants to assist Minnesota communities in establishing community quality councils. Consulting contracts will generally be approximately \$5,000 per community.

Statement of qualification should include:

- skills and experience in quality, including Deming, Juran, etc.
- skills and experience in working with community organizations—government, business, labor, educational organization.

Community quality consultants will be asked to provide an equal match of their services to the amount of the contract.

Statements of qualification should be submitted by 4:30 p.m., November 30, 1988. Please send statements of qualifications to:

Michael Cuffe
Minnesota Council for Quality
900 American Center Building
150 E. Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-1937

Non-State Public Contracts

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector.

It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of project and tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact the editor for further details.

Dakota County Human Services

Request for Proposals for System Coordinator Position for Early Intervention Services

Recent legislation gave Minnesota School Districts the responsibility for providing special education services for educationally handicapped children beginning at birth. Historically, some of these services for young children were provided by child day activity centers and funded by counties. The same legislation gave a new mandate to counties and other public agencies for interagency coordination to meet the needs of this population.

In response to these changes and new mandate, Dakota County Human Services is funding an Early Intervention Services, System Coordinator position. Responsibilities of this position include developing working agreements with each Dakota County school district; establishing a client tracking and reporting system; linking clients to available services; documenting needed but unavailable services; and conducting client satisfaction surveys.

Dakota County is seeking proposals from individuals and organizations interested in filling this position. Approximately \$35,000 are available. Office space will be available. Clerical and technical support is negotiable. The position start date will be early January 1989. Proposals are due before 4:30 p.m. on Friday, November 18, 1988.

For additional information and copies of the RFP, contact:

Gay Bakken
Human Services Planning
33 E. Wentworth Avenue, Suite 315
West St. Paul, MN 55118
Phone (612) 450-2810

Supreme Court Calendar

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning dates, locations, cases, etc., should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 612-296-2581.

October 1988

Compiled by Dale A. Hansen, (612) 297-4050.

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning the time and location of hearings should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 (612) 296-2581.

Monday, October 31, 1988 9:00 a.m.

C2-87-1707 BORG WARNER ACCEPTANCE CORP., petitioner, Appellant (Attorneys: Brian E. Palmer and Kim A. Anderson of Dorsey & Whitney and David H. Hackley) vs. **SHAKOPEE SPORTS CENTER, INC., et al., Defendants and JOHN DOBSON, et al., Respondent** (Attorney: Jaspers, Moriarty & Walburg). Opinion Court of Appeals

Is Respondent entitled to summary judgment on the personal guaranty of Appellant where inventory was delivered pursuant to a subsequent security agreement and subsequent to that agreement and Appellant had failed to notify Respondent in writing of termination of Appellant's personal guaranty?

C2-87-1433 BETH BECKER RUNIA, et al, Respondents (Attorney: Peter H. Berge of Schwebel, Goetz & Sieben) vs. **MARGUTH AGENCY, INC., et al, petitioners, Appellants** (Attorney: Marianne Settano of Peterson & Treat). Opinion Court of Appeals

Did the trial court err in finding that unconditional additur is constitutional per se in Minnesota?

Did the trial court err in concluding that Appellant insurance agent breached a duty owed Respondent policyholder by failing to provide him with coverage that would have paid the loss in question, even though Respondent policyholder failed to prove such a policy existed?

Tuesday, November 1, 1988 9:00 a.m.

C2-88-762 NCR CORPORATION, Relator (Attorneys: James W. Littlefield of Hart, Bruner & O'Brien and William M. Goldman and James A. Riedy of Lee, Toomey & Kent) vs. **COMMISSIONER OF REVENUE, Respondent** (Attorney: Thomas R. Muck, Deputy Department of Revenue). Order Tax Court

Whether the Minnesota corporate tax statutes, which do not tax income of foreign corporations, include the property, payroll and sales of foreign subsidiary corporations in the property, payroll or sales apportionment factors of corporate taxpayers to which the subsidiaries have paid dividends or royalties.

Whether the due process or foreign commerce clauses require that the property, payroll or sales factors of Relator, a Minnesota corporate taxpayer, include the property, payroll or sales of foreign subsidiary corporations from which it receives dividend or royalty income.

C1-87-1570 DELROY GORECKI, et al, petitioners, Relators (Attorney: Gregg M. Corwin) vs. **RAMSEY COUNTY, Respondent** (Attorneys: David C. McDonald and Diana J. Vance-Bryan of Briggs & Morgan) and **COMMISSIONER OF VETERANS AFFAIRS, Respondent** (Attorney: Merwin Peterson, Special Assistant Attorney General). Opinion Court of Appeals

Did the reclassification of Appellants' positions from Attorney IV to Attorney III, where Appellants' salaries were frozen and job duties remained unchanged, constitute a "removal" within the meaning of the Veterans Preference Act, *Minnesota Statutes* section 197.46?

Did the Commissioner of Veterans Affairs have substantial evidence on the record as a whole to sustain his Order or did he act arbitrarily or capriciously, or commit an error of law?

Even if the reclassification of Appellants' position constitutes a removal, was it an error of law for the Commissioner and the Administrative Law Judge to refuse to decide whether the reclassification was done in good faith and for some legitimate purpose?

Wednesday, November 2, 1988 9:00 a.m.

CX-87-1101 In Re Petition for Disciplinary Action Against EMANUEL A. SERSTOCK, an Attorney at law of the State of Minnesota (Attorney for Respondent: Segal & Roston). Petition for Disciplinary Action

What discipline is appropriate for accepting money and favors from two individuals when Respondent must have known those transfers were made for the purpose of influencing his decisions as a public official; for delaying or dismissing traffic tickets for individuals to whom Respondent was indebted at the time; for delaying proper disposition of speeding tickets outside of Respondent's jurisdiction; for failing to timely file federal and Minnesota individual income tax returns for 1983 and 1984 and failing to file returns for 1985 and 1986?

What weight should be given to mitigating factors such as personal family problems, the fact that Respondent has sought psychological help and the fact that Respondent owes no taxes?

CX-79-50365 In the Matter of the Application for Reinstatement of GARY L. WILLIAMS as an Attorney at Law of the State of Minnesota. Petition for Reinstatement

Has petitioner proven that he is presently morally, emotionally and psychologically fit to resume the practice of law?

Monday, November 7, 1988 9:00 a.m.

C7-88-756 GARY L. SARTORI, et al, Plaintiffs (Attorneys: Joy D. Bartscher of Arndt & Benton and Christian, Slen, Savelkoul, Johnson, Broberg & Kohl and John L. Holland) vs. **HARNISCHFEGER CORPORATION, Defendant and Third-Party Plaintiff** (Attorney: Steven W. Schneider of Halverson, Watters, Bye, Downs & Maki) vs. **OGLEBAY NORTON TACONITE COMPANY d.b.a. EVELETH TACONITE COMPANY, Third-Party Defendant** (Attorney: Johnson, Killen, Thibodeau & Seiler). Certified Question, United States District Court. District of Minnesota, Fifth Division

Whether application to these cases of the 15-year statute of limitations set forth in *Minnesota Statutes* section 541.051 (1980) is an unconstitutional violation of the remedies clause (Article I, Section 8), and of the due process clause of the Minnesota Constitution?

Whether the equipment in these cases [an overhead rail crane] constitutes an "improvement to real property" within the meaning of *Minnesota Statutes* section 541.051 (1980)?

Supreme Court Calendar

C5-87-1703 STATE OF MINNESOTA, Respondent (Attorneys: Edward P. Starr, St. Paul City Attorney; Gerald T. Hendrickson, Chief Prosecutor; Patricia A. Rogin, Asst.) vs. **MARY FRIBERG, et al, petitioners, Appellants** (Attorney: Barry William McKee). Opinion Court of Appeals

Should the State's misdemeanor complaint of trespassing against the Defendants be dismissed where the State fails to afford their trial within the required 60-day period?

Can the court require Defendants, as a condition of probation to stay five hundred feet away from the private premises where they had criminally trespassed?

Tuesday, November 8, 1988 9:00 a.m.

C0-88-579 UNITED SERVICES AUTOMOBILE ASSOCIATION, Appellant (Attorneys: Lawrence R. King and Jeffery W. Davis of Murnane, Conlin, White, Brandt & Hoffman) vs. **SCOTT R. LESLIE, Respondent** (Attorneys: J. Michael Dady and Charles R. Weaver, Jr. of Lindquist & Vennum). Order and Judgment Ramsey County

May an injured party recover from his underinsured motorist (UIM) insurance carrier the full amount of his UIM policy limits if he has not been paid by the tortfeasor's liability insurance carrier and his damages exceed the liability coverage limits?

Wednesday, November 9, 1988 9:00 a.m.

C5-87-1877 INTERSTATE FIRE & CASUALTY COMPANY, Respondent (Attorneys: Kay Nord Hunt and Thomas E. Peterson of Lommen, Nelson, Cole & Stageberg) vs. **AUTO-OWNERS INSURANCE COMPANY, petitioner, Appellant** (Attorney: Kevin S. Carpenter of Quinlivan, Sherwood, Spellacy & Tarvestad). Opinion Court of Appeals

Is Appellant, as an umbrella insurance carrier, entitled to reimbursement from Respondent, a non-contributing primary carrier?

Does the business pursuits exclusion in the policy issued by Respondent exclude coverage for an injured student for claims brought by a fellow student arising out of a school activity?

C7-88-14 STATE OF MINNESOTA, petitioner, Appellant (Attorney: Toni A. Beitz, Assistant Hennepin County Attorney) vs. **MARA THERESE QUINN, et al, Respondents** (Attorneys: McGlennen & Clemons; Craig Cascarano and Peterson & Singer). Opinion Court of Appeals

Does omission of language specifying that a wiretap warrant must terminate "upon attainment of the authorized objective" in a warrant which contains alternate termination language render the warrant facially deficient so as to require suppression of all evidence derived from the wiretap?

Supreme Court Decisions

Decisions Filed 28 October 1988

C8-87-2361, CX-87-2362, C7-88-238 In Re Ethics Complaint of William Kennedy v L. D., (C8-87-2361), B. D., (CX-87-2362), and A. D., (C7-88-238). Supreme Court.

The Lawyer's Professional Responsibility Board policy which provides for initial review of ethical complaints against attorneys employed by the Office of Lawyers Professional Responsibility to be conducted by panels of the Board does not create an inherent conflict of interest where the Board and the Director's Office are separate entities and where reviewing Board members have no supervisory authority over the attorneys complained of.

Summary dismissals of complaints were proper where petitioner made no showing of actual bias or prejudice on the part of any individual panel member and where allegations, even if true, would not constitute misconduct.

Affirmed. Per Curiam.

Concurring in part, Dissenting in part, Popovich, J.

C3-87-1439 In re Petition for Disciplinary Action against James J. Boyd, an Attorney at Law of the State of Minnesota. Supreme Court.

A 6-month suspension is warranted where an attorney prepares a false deed and causes it to be forged, notarized and filed and later issues a false title opinion based on that deed.

Suspended. Per Curiam.

Announcements

Antlerless Deer Permits: Over 100,000 hunters were selected for an antlerless deer hunting permit out of 276,000 applicants the Minnesota DNR reported. Those applicants who do not receive a permit in the mail by Friday, October 28 can assume they were not successful in the computerized drawing. An estimated 111,000 permits were selected, a number similar to the number chosen in 1987. However, distribution of the permits across the state is different, reflecting the comparative status of deer populations. Hunters should note that some permit areas consist of more than one numbered block and that an antlerless permit is valid for the group of blocks as described on the deer season map, even if only one of the block numbers appears on the permit. The statewide deer harvest and overall hunting success is expected to be about the same as the 135,000 and 32% achieved in 1987. In 1987 when bucks made up a larger proportion of the harvest than they usually do. DNR officials say 1988 will return to the normal proportion of bucks-to-does in the harvest because it isn't likely that as many factors favorable to a higher buck harvest will coincide again. The firearms season for deer opens in Minnesota on Nov. 5.

Transitional Housing for Homeless Allocated: More homeless Minnesotans will have access to transitional housing this fall and winter as a result of \$182,500 in state and federal funds that have been allocated by the Minnesota Department of Jobs and Training. Funds will be granted to 21 programs located in Anoka, Burnsville, Crookston, Duluth, Mankato, Marshall, Minneapolis, St. Cloud, St. Paul, Rochester and Willmar, said Jobs and Training Commissioner Joe Samargia. "We are committed to programs like this that help people get back on their feet," Samargia said. "Our department tries to find jobs for people who are out of work, but we also provide assistance with training, shelter, food, education and other needs," he said. The agencies selected for the grants will provide shelter to individuals on a 24-hour basis for up to six months, Samargia said. In addition, the agencies will provide support services to help the homeless find their own housing. Most existing shelters for the homeless offer a bed for 12 hours a day and less extensive support services. The 21 programs will offer services such as education, legal and employment assistance, child care, and information and referral. The funds are appropriated from the state Legislature under the Temporary Housing Demonstration Program and the Minnesota Community Services Block Grant Program.

Vulnerable Groups Urged to Get Shots: As cold weather approaches, Minnesota health officials are again recommending that people in certain "high risk" groups be immunized against influenza and pneumonia. Several hundred Minnesotans die of those diseases every year, according to health officials. The shots are being recommended for a number of groups that may be especially vulnerable to the potential complications of influenza and pneumonia—including people over 65, and people with heart disease, lung disease or diabetes. Also at risk are children and teenagers with other health problems who are being treated with aspirin. The aspirin can increase their risk of developing a serious complication of influenza called Reye syndrome. Manufacturing problems have caused delays of 4 to 6 weeks in distributing the influenza vaccine, in some parts of the country. However, officials expect the vaccine to be available everywhere by late October. As in past years, the new influenza vaccine has been formulated to protect against those strains of the disease most likely to appear in the U.S. during the coming winter. Because influenza strains vary from one year to the next, people at risk of developing complications should be revaccinated every year. Adults who are at risk for influenza complications should also consider being immunized against pneumococcal pneumonia, a disease which can follow an episode of influenza. The pneumonia vaccine only needs to be given once, and it can be administered at the same time as the influenza vaccine. People who want more information about influenza and pneumonia immunizations are urged to see their physician — or contact their local health department.

Awards for Excellence in Public Service: Awards to state employees who have excelled in performing public service were presented by Governor Perpich, who said recipients "continue Minnesota's great heritage of forming partnerships on behalf of more responsive and compassionate service for our people." Perpich said, "the work of these individuals, and the many other dedicated state employees, compels national policy makers to look to Minnesota for leadership." Honored were Donna Fairbanks of Minneapolis, Indian housing coordinator with the Minnesota Housing Finance Agency received the Community Service Award; John Grimley of Walker, received the Excellence in Management Award for his concurrent role as chief executive officer and acting CEO in two state institutions, Ah-Gwah-Ching Nursing Home/Lakeside Treatment Center in Walker and the Minnesota Veterans Home in Minneapolis; the AIDS staff of the Minnesota Dept. of Health received the Excellence in Performance Award; Stella Jones of Minneapolis, employment counselor in the Minneapolis area office of the Dept. of Jobs & Training received the Public Service Award; Alan Withers of West St. Paul, director of the Dept. of Agriculture's Minnesota Agriculture in the Classroom program, received the Teamwork Award. Recognized for their contributions to public service were: Dr. Phillip J. Anderson of Grand Rapids, president of the Arrowhead Community College Region; Vivian Fusillo of Winona, associate professor in Winona State University's Dept. of Communication and Theatre Arts; Michael Haley of St. Paul, director of the homeownership division of the Minnesota Housing Finance Agency; the Inter-agency Ad Hoc Task Force on Adolescent Pregnancy and Parenting; Michael Powers of Minneapolis, plant maintenance engineer at Normandale Community College; and Lorene Wedeking of St. Paul, assistant director in the Public Health Nursing Section of the MN Dept. of Health. Winner of the Governor's Award for Excellence in Management to John McLagan, Dept. of Corrections for the Sentencing to Service Project of the departments of Corrections and Natural Resources.

Minnesota's North Shore

Historic Sites and Place Names of Minnesota North Shore. Stories recounted by a retired DNR Forester about the North Shore's timbermen, pioneer settlers, commercial fishermen, and others who knew the area first hand. Stock #9-11. 35pp. \$3.50 + tax.

Up North. A memorable collection of essays and stories that capture the mystic moods, seasonal subtleties and colorful characters that fill the landscape up north. Stock #19-16. \$14.95 + tax.

A Family Guide to Minnesota's North Shore. The 150 miles from Duluth to the Canadian border offer travelers wilderness experiences, places of historic significance, and visions of astonishing beauty. Stock #19-84. \$3.95 + tax.

Boundary Waters. Almost 100 pages of beautiful color photographs of Minnesota's canoe country, by Jerry Stebbins with rich text by Greg Breining. Stock #19-69. \$24.99 + tax.

Minnesota II. Colorful photographs showing the lyrical balance between country and city, land and water, inhabited by 4.2 million people across 84,000 square miles. A delight for the eyes, with photos by Richard Hamilton Smith and text by Richard A. Coffey. Stock #19-30. \$32.50 + tax.



TO ORDER: Send to Minnesota Documents Division, 117 University Avenue, St. Paul, MN 55155. (612) 297-3000, or toll-free in Minnesota: 1-800-652-9747 and ask for "DOCUMENTS." Please include 6% sales tax and \$1.50 postage and handling. Prepayment required. Please include daytime phone. VISA/MasterCard orders accepted over phone.

Publication editors: As a public service, please reprint this ad in your publication as is, reduced, enlarged, or redesigned to suit your format. Thank you.

Guides for Small Businesses

These helpful guides have been published to answer needs that have been expressed by graduates of the U.S. Small Business Administration's courses in business management. The books are designed to achieve a practical balance between basic theory and day-to-day business practices. Continuing self-education is important for small business owners in an ever changing business world, and these do just that in "shirt sleeves" fashion and in language that the chief executive of the small company can use to translate the ideas presented into decisions and actions.

Starting and Managing a Small Business of Your Own. Stock #16-40. \$4.75 + tax.

Guides for Profit Planning. Stock #16-41. \$4.50 + tax.

A Handbook of Small Business Finance. Stock #16-42. \$2.00 + tax.

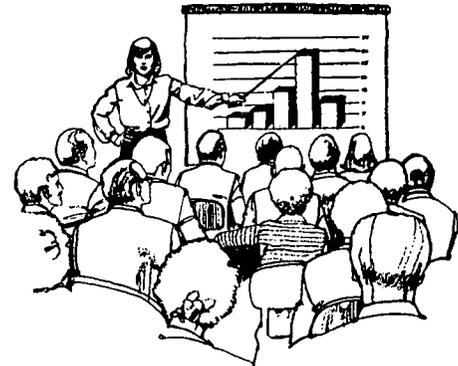
Starting and Managing a Small Service Business. Stock #16-48. \$2.00 + tax.

Insurance and Risk Management for Small Business. Stock #16-50. \$3.00 + tax.

Business Basics. Stock #16-48. \$4.75 + tax.

Managing for Profits. Stock #16-68. \$5.50 + tax.

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River Stories That Warm Your Heart

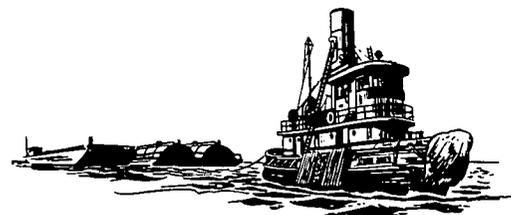
A Stretch on the River. 1950 novel about the son of a wealthy family who goes to work on a Mississippi River towboat to avoid being drafted. With power, gusto and humor, author Richard Bissel creates an energetic, rowdy, and delightful account of a typical trip up the river, accurately re-creating a colorful era of towboating on America's major waterway. Stock #17-6. \$8.95 plus tax.

High Water. During the worst flood on the Mississippi River anyone can remember, the mate of a towboat has his hands full on a perilous trip, working with an unhappy crew, an angry captain, and too many barges to push against too much river. A 1954 Richard Bissel novel reveals the drama, humor and charm of working on the river. Stock #17-8. \$8.95 plus tax.

Old Times on the Mississippi River. George Merrick's lively, loving, and humorous reminiscences of his steamboat life from the bottom up, as a pantry boy, apprentice engineer, second clerk, and "cub" pilot. First published in 1909, he describes steamboat operations—from machinery and personnel to the economics of the business—with vivid examples and rich detail. 323 pp. includes appendices and index. Stock #17-45. \$8.95 plus tax.

Canoeing with the Cree. Minnesota's distinguished newsman, Eric Sevareid, wrote his first book in 1935 about a canoe journey he and a classmate made to Hudson Bay. The classic recounts their trip on the Mississippi, Minnesota and Red River of the North Rivers into Lake Winnipeg, and then God's River to Hudson Bay. 209 pp. includes index, maps and photos. Stock #17-14. \$6.95 plus tax.

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Looking at Market Expansion?

A Basic Guide to Exporting. Step-by-step look at developing a profitable international trade, this book reveals export strategy and advice, market research, channels of distribution, making contacts, selling overseas, pricing and terms, financing the sale, export regulations, customs benefits, tax incentives, shipping and documentation, after sales service, and getting paid. Includes 10 appendices and an index. 148pp. Stock #16-69. \$8.50 + tax.

Minnesota: State Statistical and Economic Abstract. This helpful fact book by the U.S. Dept. of Commerce catalogs statistical data on population and households, labor market and human resources, economic overview, construction, manufacturing, international trade, personal income, government, high technology, state rankings in the U.S., telecommunication, information resources, travel and tourism, climate overview and geodetic service. 119pp. Stock #16-8. \$12.00 + tax.

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Minnesota: national leader in education

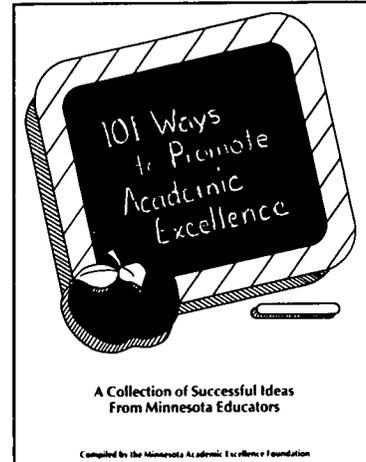
101 Ways to Promote Academic Excellence

A collection of nuts-and-bolts methods educators have successfully used to foster academic achievement. These are techniques that directly help students, can be replicated easily, are cost-effective, and that work in meeting public education's great challenge: helping every single child learn. Code #5-1, \$4.50.

Education Directory, 1987-88

This popular comprehensive directory contains Minnesota school districts, superintendents, principals, addresses, phone numbers, and enrollment. 128 pages, paperbound. Code #1-93, \$6.00.

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What's more, you can choose from several selection capabilities. You will find our selections most helpful and beneficial to your business when you learn that you can acquire names and addresses of individuals in the areas you need to target most.

Find out more about our mailing lists by writing for our free mailing list catalog. In a hurry? Call (612) 297-2552 for more information. Requests can be sent to: Minnesota Documents Division, Mailing List Operation, 117 University Avenue, St. Paul, MN 55155.

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Minnesota Manufacturer's Directory 1987-88



UPDATED: Name, address, phone number, staff size, sales volume, market area, year of establishment, type of firm, C.E.O., Sales or Marketing Manager, Purchasing Manager and four major manufactured products. Code #40-2, \$73.00.

NEW: In the directory this year are two titles (where applicable) Chief Engineer and Data Processing Manager.



REVISED: There are more than 7,000 changes to the 7,068 entries.



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Voices of the Loon

Its voice severs the bonds to the world of cities, traffic, crowds, lights and noise. The lyrical magic of the loon, sometimes hauntingly eerie, makes the skin tingle, and the hair on the back of the neck stand on edge, awakening a primitive response. Its solitary wail turns the shadowy wilderness into a mysterious path into eternity.

Voices of the Loon, cassette tape, includes introduction and loon call identification, chorus from a distant lake, tremolo duet, wail duet, border confrontation, wails with morning songbird chorus, tremolos while running, wails during a thunderstorm, and coyotes calling with loons. Code #19-73, \$12.00.

The Loon: Voice of the Wilderness, hardbound with color plates and illustrations, 143 pages. Code #19-54, \$15.95.

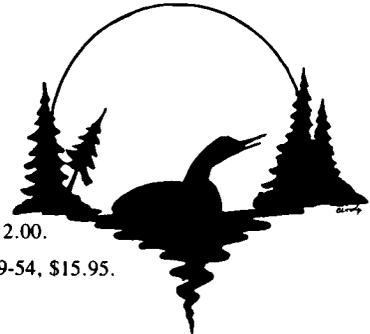
Loon Calendar 1988, beautiful photographs and scenes. Code #15-40, \$6.95.

Loon Lapel Pin. Code #15-30, \$2.49.

Loon Windsock, 56 inches long in full color. Code #15-29, \$19.95.

Loon Nature Print, full-color poster 16" x 22", Code #15-18, \$3.00.

Loon with baby—poster, 16" x 20". Code #15-48d, \$3.00.



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Minnesota's future environment

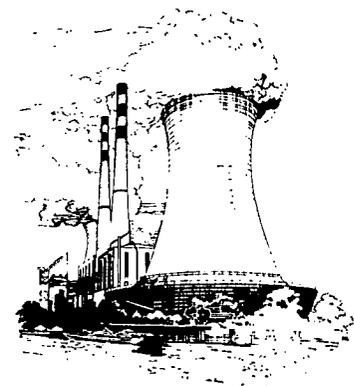
The issue of environmental protection is of continuing interest to both Minnesota business and the general public. Stay abreast of changes in state government regulations with these publications.

1987 Pollution Control Laws

Laws dealing with water pollution, disposal facilities, solid waste management, the MN Environmental Rights Act, recycling, and more. Code No. 2-21. \$15.00.

1987 Hazardous Waste Rules

Governs the production, storage, transportation and disposal of hazardous waste. MN Rules Chapter 7045 and 7046. Code No. 3-71. \$15.00.



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Career Opportunity Bulletin, 1 year	\$ 25.00	90-3	State Register, 1 year	\$130.00	90-1
Career Opportunity Bulletin, 6 mos.	\$ 20.00	90-4	State Register, 3 mos. trial can be converted to a full subscription for \$90 at end of trial	\$ 40.00	90-2
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Human Services Bulletin List	\$ 30.00	90-7	Tax Court/Property Decisions	\$210.00	90-11
PERB (Public Employee Relations Board) Awards	\$285.00	90-9	Workers Compensation Decisions, unpublished subs run Jan-Dec; can be prorated	\$320.00	90-12
PERB (Public Employee Relations Board) Decisions	\$ 60.00	90-10	Workers Compensation Decisions		
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For Real Estate Professionals:

REAL ESTATE RULES 1987

Chapters 2800, 2805, and 2810 from the Minnesota Rules. *Essential* for both students and established brokers and salespersons. It contains all education and licensing requirements. Code No. 3-99. \$8.00

REAL ESTATE LAWS 1987

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Morel: Minnesota's mushroom

ROON: A Tribute to Morel Mushrooms, this delightful treatise on the "filet mignon" of mushrooms will help the stalker of this elusive prey find, and prepare in a variety of ways, its mouth-watering madness. Code #19-55, \$12.00.

Edible Mushrooms, a classic guide to safe mushrooms, describes 60 species in detail, with photographs (many in color) to show each in its natural habitat. Advice to amateur mushroom hunters. Paperbound, 118 pp. Code #19-11, \$9.95.

Malfred Ferndock's Morel Cookbook, brim full of morel lore, interesting and tall tales, recounts of the hunt, and many savory recipes. Spiral bound, 117 pgs., black & white photos and drawings. Code #19-83, \$8.50.

Northland Wildflowers, the perfect mushroomers companion. An excellent guide for identification and enjoyment of wildflowers, with 308 color photographs and descriptions of 300 species. Paperbound. 236 pp. Code #19-9, \$12.95.

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NOTARY PUBLIC LAWS

Statutory requirements regarding the oath of office, necessary bond, and taking of depositions. Includes an explanation of the term of office and procedures for removal from office. Code No. 2-13. \$4.00.



Jane Smith
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY

My Commission Expires January 1, 1994

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Insurance and Risk Management for Small Business	Code No. 16-50. \$3.00.
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Catching criminals is only one part of law enforcement. Here's the rest of it.

Police Report Writing Style Manual 1986—A common framework for report writing throughout the state. Discusses the general purpose of police reports, reviews field notetaking, offers instructions on completing common report forms, and introduces the Data Practices Law. Code No. 14-13. \$12.50.

Background Investigation Manual 1986—A guide to conducting effective thorough background investigations of peace officer candidates. Included are various criteria for use in the selection process: experience, education, and past behavior. Sample forms. Code No. 14-15. \$10.00.

Motor Vehicle Traffic Laws 1987—Includes laws governing motor carriers, motor vehicle registration and no-fault auto insurance. Code No. 2-85. \$13.00.

Criminal Code & Selected Statutes 1987—Governs the conduct of peace officers. Includes continuing education requirements, sentencing standards, and more. Code No. 2-68. \$15.00.

Blue Binder—3 ring, 2" capacity. Criminal Code and Motor Vehicle Traffic Laws require 1 binder each. Code No. 10-21. \$4.25.



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Murder in Minnesota is a treasury of vintage crimes. Characters, some famous, some obscure, come to life in all their cleverness or murderous madness. Minnesota cases from 1858-1917. 253 pp. photos, index. Code 17-35, \$5.95.

Robber and Hero On September 7, 1876 six members of the James-Younger gang blasted their way out of Northfield, Minnesota. George Huntington's classic account of the Northfield Bank raid is as fascinating today as it was when first published 19 years after the attempted robbery. 125 pp., charts, maps, photos, with index. Code 17-40, \$5.95.

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